(1) Supreme Court, U.S.
FILED
10-224 DEC 17 2010
OFFICE OF THE CLERK
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In The

SUPREME COURT OF THE UNITED STATES

James D. Schneller,

Petitioner

v.

Prospect Park Nursing and Rehabilitation Center, Marjorie Zitomer; Richard Schneller; T. Sergeant Pepper, Esquire

Respondents

PETITION FOR WRIT OF CERTIORARI

James D. Schneller pro se
500 E. Lancaster Ave. #111d
Radnor, PA 19087
610-688-9471

QUESTIONS PRESENTED

A. Whether time to file the notice of appeal was tolled by filing of a motion for leave to reply to responses to motion for amendment or reconsideration of a concluding order, and a motion for sanctions for false pleading in the proceeding culminating in pleadings responsive to the motion for amendment or reconsideration.

B. Resolution of errors of law, and reversal, are requested, of a Circuit Court's affirming of denial of an urgent motion to reply to responses to a motion for amendment or reconsideration of a concluding order, and affirming of denial of a motion for sanctions for false pleading in the proceedings culminating at the time of the motion for amendment or reconsideration.

C. Whether a trust estate beneficiary, trustee ad litem, co-contractee, and additionally qualified offspring of a deceased may litigate torts on behalf of the deceased, that were experienced together with the deceased, pursuant to existing authorities, which do not delineate the specific circumstances present in this case.

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To the Justices of the Supreme Court:

Petitioner James D. Schneller, representing himself, on behalf of all plaintiffs and the issues affecting them, requests a writ of certiorari to the Third Circuit Court of Appeals, and relief in the alternative, stating as follows :

I. JURISDICTION

This petition is taken from a decision of a United States Circuit Court of Appeals. The date on which the United States Third Circuit Court of Appeals decided this case was March 8, 2010. The order denying rehearing of the decision was entered on April 12, 2010.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1)

Petitioner has raised his objections and arguments in regard to the issues presented in this petition, in the proceedings below. Petitioner raised all issues including the within questions, in

the pleadings which he presented to the trial Court, making certain to preserve any issues, due to lack of hearing and failure of the defendants to address many of the issues in plaintiff's pleadings. Each issue in these proceedings was responded to by respondents or was afforded an opportunity for response by respondents.

II. OPINIONS BELOW

The United States Court of Appeals for the Third Circuit decided this case in an order, dated March 8, 2010.

The District Court for Eastern Pennsylvania decided this case in an memorandum and order entered June 26, 2009

III. STATEMENT OF THE CASE

Son-caregiver, plaintiff ("petitioner"), wrongful death beneficiaries, and the estates of the deceased, filed a complaint alleging deprivals, and conspiracies to deprive, civil rights, violations of Assisted Suicide Funding Restriction Act and other

statutes, intentional torts, and wrongful death, with motion for leave to proceed in forma pauperis. The motion for leave to proceed in forma pauperis was denied in a memorandum and order dismissing the case for lack of federal question jurisdiction. Plaintiff appealed and the Third Circuit dismissed the appeal pursuant to 28 U.S.C. §1915(e)(2)(b). Plaintiff petitioned for a writ of certiorari to the Court, and then, as plaintiff had been successful in paying the fee for two unrelated but procedurally similar cases, re-filed the complaint with the filing fee, naming the non-diverse parties as potential defendants and serving them, as all, for the duration. The complaint was filed within the allowable time, and contained a general claim for jurisdiction, pursuant the Pennsylvania savings statute, 42 Pa. C.S. § 5535,. Motions to dismiss were filed by the defendants including for lack of jurisdiction, absence of private right(s) of action, and the statute of limitations. The order granting the motions to dismiss ("concluding Order"), was entered on June 26, 2009. Plaintiffs filed a timely motion for amendment and reconsideration, and then, claiming surprise, and overt falsity by the defendants, filed a motion to supplement the record, attaching a proposed reply to responses to the motion for reconsideration, and a requested motion to amend to add declaratory action, and also filed a motion for sanction and for costs

pursuant to 28 USC §1927 and F.R.C.P. 11, claiming that false and misleading claims in said responses, mirrored similar error, in volume, in all of the pleadings, so that sanction, as well as reconsideration (requesting thus an additional "reconsideration" or opening of judgment, for further deliberation) were amply warranted, in the interests of fairness and full adjudication, especially in light of the express error claimed to exist in the concluding decisions appealed from.

The District Court denied the motion to supplement the record and motion for sanction in orders entered on September 4 and September 9, 2009, respectively. Petitioner filed a motion for leave to appeal in forma pauperis which was granted and then, unsure of which clerk might further process the matter as a bona fide appeal, petitioner filed a notice of appeal with the Third Circuit Court of Appeals.

The Third Circuit clerk and Legal Division forwarded the appeal to the Circuit Court for a determination as to whether jurisdiction was proper, and plaintiffs filed a statement in support of jurisdiction claiming reasons that are generally stated in this petition. A panel entered an order on March 8, 2010, dismissing the appeal from the concluding order and the motion to supplement the record for lack of jurisdiction and affirming the

denial of the motion for sanctions. Petitioner filed a motion pursuant to F.R.A.P. 35 and F.R.A.P. 40, for rehearing en banc, requesting in the alternative, due to extraordinary circumstances constituting good cause, leave to file appeal out of time pursuant to F.R.A.P. 4 (A)(5). The motion was denied in an Order docketed at April 2, 2010.

IV. MOTION FOR CONSOLIDATION AND FOR DEFERRAL

Petitioner requests or suggests consolidation of this petition with a concurrent petition filed 11 days ago. That petition contains this same request and a request for deferral pending this action, pursuant to Supreme Court Rules 13.5, 15.3, 25.4, and 30.4, and F.R.A.P. 3(b)(2), F.R.A.P. 28(i), and F.R.A.P. 26 (b).

Each legal issue raised in this petition is also at issue in said petition for writ of certiorari, taken from a decision by the Third Circuit in appeal 09-4577 (Schneller v. Fox Subacute at Clara Burke) which, in order to be timely, was filed with the clerk on July 1, 2010.

Petitioner requests the Courts' attention to the fact that he has more fully argued the legal discussions, in this petition, and that this therefore might be permitted incorporation into the first-filed petition.

V. REASONS WHY CERTIORARI SHOULD BE GRANTED

The Third Circuit has decided in an overtly erroneous manner. The panel decisions are contrary to decisions of other panels of the United States Court of Appeals for the Third Circuit and this Court. This dismissal/affirmance, and the underlying appeal deprived of a full review, involve questions of public and legal importance.

A. Whether time to file the notice of appeal was tolled by filing of a motion for leave to reply to responses to motion for amendment or reconsideration of a concluding order, and a motion for sanctions for false pleading in the proceeding culminating in pleadings responsive to the motion for amendment or

reconsideration.

374) In the jurisdictional aspect, the Third Circuit has dismissed in a decision denying any tolling of the time for appeal or accrual of time for appeal at a later point in time, by way of motions seeking findings of overt falsity in pleadings, both before and after the order designated as final order, including in response to a motion for rehearing, amendment, or reconsideration, that was denied quickly, in a surprise to plaintiff. Plaintiffs requested to "supplement the record" because they would have filed the reply as a request and moreso they sought to file a motion to amend to add counts for declaratory action and injunctive relief regarding ongoing wrongful and illegal acts and violations of law in both state bureaus and in private industry.

The Third Circuit decides in conflict with basic principles of fairness and justness, as abundantly propounded in the published law, by disallowing the claim for tolling, i.e. finality being present only upon the deciding of all pending motions, because the claim is well-founded, and deals with the most abhorrent of acts : perjury. Perjury, in fact, is not a reason as of course for

filing of civil cases, nor for filing new cases or collateral attacks, so plaintiffs had a clear right to urgently raise it in the body of the entire subject matter, as they diligently attempted. Remand for evidence was warranted.

Plaintiffs have claimed that the final orders entered, under the circumstances, are the orders denying the motion for sanction and the motion to supplement the record, pursuant to claims including that new evidence of outright falsity in the pleadings, as well as the absence of any "with prejudice" in the order claimed to dismiss, and along with the "merger rule," which provides that interlocutory orders issued before a final judgment are reviewable at the same time as the final judgment. Plaintiffs also alternatively requested the Third Circuit for ex post facto extension of time to file notice of appeal.

Plaintiffs named all three orders in their notice of appeal. Plaintiffs during this time would be justified in filing a motion to file an amended complaint, but didn't include this aspect in the motion to amend, because it was clear that the District Court was very likely to be adamant about the closed aspect of the case, and had acted so at similar prior instances.

Plaintiffs, noting the falseness in responses to the motion "for amendment and reconsideration,"

first filed the motion to supplement, in which, pleading surprise at the rapidity of action on motions for amendment, rehearing, or vacating, they raised among all the fact that pleadings in this case contained "substantial unfounded and/or inordinate claims and argument" by defendants. Plaintiffs' proposed reply, attached thereto, then addressed this issue and raised written demands served on defendants by plaintiffs, demanding correction of falsity in their pleadings.

Plaintiffs, as is required in state law, sent "safe harbor" demands for amendment or retraction of the pleadings claimed to be false. This is why there was a delay between the motion to supplement the record, and the motion to sanction. Prior to Court action, plaintiffs filed the motions for sanction, raising in greater detail defendants' false claims and false conclusions of law.

The Third Circuit was requested to find for plaintiffs' claim that there was a continuum between the post-decision pleadings that warranted a deciding together, which they in fact were, and moreso, that the District Court decided the motions for amendment or vacating, prior to the fair and usual amount of time, that being the 20 days permitted to parties to request leave to amend a pleading. This caused the motion to

supplement, and subsequent motion to sanction (which was filed within 30 days of the motions to supplement) to be timely and diligent.

The facts of record exhibit clearly an intent by plaintiffs to initiate, for the District Court's adjudication, a proceeding on vacating or amending, based on a claim of substantial falsity in the pleadings. This is a proceeding on new evidence and plaintiffs had a right to raise it in a post-judgment proceeding under the Rules. The motion for sanction was a further means to this end which specified specific instances and caused a prima facie evidence before the trial Court as well as placing much of the burden on the defendants. Besides constituting new evidence, the matter was also, involving perjury and refusal to discover in the underlying proceeding, extraordinary in it's unlawfulness, and egregiously disrespecting to the Courts and the parties.

The Third Circuit in affirming has decided contrary to standing law. The concluding order neither ended the litigation nor left the court only to execute its judgment. Cunningham v. Hamilton County, 527 U.S. 198, 119 S.Ct. 1915, 144 L.Ed.2d 184 (1999). It was not "on the merits" as per the Third Circuit's citing of Budinich v Becton Dickinson & Co,. 486 U.S. 196, (1988) , for reasons including substantial gaps where the District Court

simply tried to spread the arguable dismissals around to all parties and all claims and then summarily declared the State claims untimely and/or predominant. Moreso the merits have not been decided because jurisdiction has been found absent. In re: Orthopedic "Bone Screw" Products Liability Litigation), 132 F.3d 152, 155 (3d Cir. 1997) see Korvettes, Inc. v. Brous, 617 F.2d 1021, 1024 (3d Cir. 1980) ("A dismissal for lack of jurisdiction is plainly not a determination of the merits of a claim. Ordinarily, such a dismissal is 'without prejudice.' "

A sanctions order is not always an order separate from the action it stems from. Mr. Justice Thomas has written for the unanimous Court, that "appellate review of a sanctions order [cannot] remain completely separate from the merits." Cunningham at 205, 119 S.Ct. 1915. A Rule 37(a) sanctions order will frequently be "inextricably intertwined with the merits of the action." The Third Circuit embraced the application of Cunningham, holding in Comuso v. Nat'l R.R. Passenger Corp., 267 F.3d 331, 338-39 (3d Cir.2001),(Cunningham applied to sanctions imposed under a district court's inherent powers for conduct that occurred outside the court . . earlier Third Circuit decisions allowing counsel to appeal sanctions immediately "are no longer good

law to the extent that they conflict with Cunningham." Id. at 339.

Petitioner also asks relevance of the forma pauperis aspect to this question of what order constituted the final order. Plaintiff not only granted forma pauperis for appeal, but has now been granted forma pauperis for the purposes of obtaining a certified transcript so that he may lawfully file the transcript in the State Court, so as to file the case there.

Plaintiff has not only relied on Pennsylvania state law regarding finality, but has also relied on all Pennsylvania Court's emphasis on economy and efficiency, and where he is impoverished, and believed he diligently prevented multiplicity of appeal, and moreso, where multiplicity of suit and appeal is a charge which is now continually and falsely leveled at plaintiff, and where plaintiff had even more reason to believe that the circumstances as a whole supported finality only of the last order or at worst the order denying leave to supplement the record.

In regard to the request to "open" the reconsideration due to surprise and express perjury, a Court has the power to revisit prior decisions of it's own or of a coordinate court in any circumstance, although as a rule courts should be loathe to do so in the absence of extraordinary

circumstances such as where the initial decision was 'clearly erroneous and would work a manifest injustice.' Christianson v. Colt Industries Operating Corp., 486 U.S. 800, 817, 108 S.Ct. 2166, 100 L.Ed.2d 811 (1988) (quoting Arizona v. California, 460 U.S. 605, 618 n. 8, 103 S.Ct. 1382, 75 L.Ed.2d 318 (1983)). In other words, the law of the case doctrine does not limit a federal court's power, rather it directs its exercise of discretion. Public Interest Research Group of New Jersey, Inc. v. Magnesium Elektron, Inc., 123 F.3d 111, 116 (3d Cir.1997).

Plaintiffs might have sought sanctions earlier in the proceedings, but, besides being numbed by a continuous leveling of exaggeration and falsity at them, there is little support for any claim that a motion for sanctions would have been granted, or would have deterred additional falsity. Defendants have enjoyed such results in motions for sanction in the state court action and have then proceeded to continue their malfeasance right through subsequent appeals. Plaintiffs, however, seeing the same bald malfeasance appear during a reconsideration action, thought it advisable to prosecute this claim at once while the case remained in the trial Court. Plaintiffs believe that the falsity of the defendants was apparent to the trial Court during the proceedings.

Plaintiffs claim additional conflict with law and misapprehension of fact, because Rule 4 states, in regard to post-trial motions, that "the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:" F.R.A.P. 4 Plaintiffs validly filed a post-trial motion and it's related co-motions and thus appeal was most properly and efficiently filed from the last-decided motion. The Third Circuit has affirmed too swordlike a decision, so that both Courts discount well-known principles of finality, efficiency and fairness. There is no law that dictates that an Order once final cannot become a step in the progression to a new final order.

Petitioner can find no decision negativing to plaintiffs' claim that an order appealed from may subsequently become secondary to a new final order or orders, due to a cases' specific circumstances. There is no rule against a party working within the procedural confines in order to bring out a new aspect of the case, especially a newly discovered or newly heightened one.

Dismissal of Complaint and Denial of Rehearing Has Been Upheld or Allowed to Improperly Affect The Issue of Tolling

Petitioner refers to and incorporates the section

by this title in the concurrent petition from Third Circuit No. 09-4577. The Third Circuit has decided contrary to standing law if it has affirmed in any sense other than the affirming of the denial of sanctions. Moreso the error in the decision and opinion warrant an exercise of the Court's authority.

The findings in the opinions exhibit great error and the debilitating effect on the case by the findings of the District Court. For instance on page 9 the Third Circuit finds that objections to misuse of the advance health directive were made solely by James D. Schneller yet objections by the victim Marjorie Schneller, and moreso, concealment of said misuse, were stark foundational fact in this case. Likewise on page 15 of it's opinion (as also occurs in the concurrent case) the District Court misstates the filing dates of the second-filed complaints, which, besides being irrelevant due to the continuum caused by reversal and/or State savings statute, is misstatement with knowledge that the cases were filed within the four year statute of limitations, measured from date of death, in the first place .

Likewise, as another example, the District Court's refusal to exercise supplemental jurisdiction is stated in one sentence at the

concluding paragraph. This is in conflict with the requirement in Sparks v. Hershey, 661 F.2d 30, 33 (3d Cir. 1981), that a Court articulate its reasons for doing so, and so is an abuse of discretion

For all of the above reasons, petitioner requests that the writ be granted, or in the alternative, reversal or vacating with instructions.

B. Resolution of Errors Of Law and Reversal are Requested, of a Circuit Court's Affirming of Denial of A Motion For Sanctions For False Pleading In The Proceeding Culminating At The Time Of The Motion For Amendment Or Reconsideration.

Again, as claimed in the preceding section, abuse of discretion has been inflicted on this fully triable case. This is supported by errors in law, misapprehension of fact, and failure to address many issues of law and fact.

Motion To Supplement the Record

In this case the order denying the motion for sanctions was inexplicably entered 5 days after denial of motion to supplement the record, so the motion to supplement (which had attached the motion to add declaratory action) has been declared beyond the Circuit Court's jurisdiction.

The motion to supplement, which sought leave to respond to responses to the rehearing request, was greatly warranted because it was new evidence and was evidence of perjury present in the proceedings right up to that time. Defendants cannot be permitted to swing the record with mistruths in the closing chapters of a pretrial controversy.

It is noteworthy that plaintiff correctly presented the response as a motion for leave to file. Also, the Third Circuit found that a 20 day period for amendment of a pleading does not, due to definition of a "pleading," pertain to motions for reconsideration, but ignored petitioner's claim that all prior post-dismissal motions had taken considerably longer periods of time, which in fact

supports a finding of partiality, where haste indicated a discernible effort to prevent further objections by a party. Plaintiffs' allegations of perjury exceed the threshold for discretionary adjudication and did in fact gain the ear of the District Court, which awaited the motion for sanctions predicted in the prior pleading.

The appeal in reality offers a strong instance of multiple error causing manifest injustice.

Plaintiffs therefore respectfully request amendment or vacating of the finding of insufficiency of the motion for amendment and reconsideration, and such action deemed worthy, including leave to amend the motion for amendment or reconsideration and/or the reply to responses to said motion.

The Motion for Sanctions

We normally review the District Court's award of costs and sanctions for abuse of discretion, but if the procedure the court employs in imposing sanctions raises due process concerns, our review is

plenary. See Martin v. Brown, 63 F.3d 1252, 1262 (3d Cir. 1995) .

The Third Circuit has affirmed denial of a motion for sanctions filed in regard to persistent falseness in the pleadings. Abuse of discretion has taken place, notably, by way of the Third Circuit's finding that such was a matter for appeal, not a post trial motion, and that perjurious circumstances a) do not equate with an improper purpose or a misleading of a Court, and b) do not constitute new evidence under the rules regarding rehearing, amendment, and reconsideration.

The Third Circuit has relied on a finding that the matter of the motion for sanctions was a matter for appeal, yet, as a pleading filed in conjunction with a post-trial motion for amending or vacating pursuant to new evidence, coupled with a motion for costs or sanctions, appeal would not have been possible, or would have resulted in remand, since the evidence needed elaboration, as is now requested herein. Thus the very reason for urgently and diligently bringing the issue to the district Court's attention is now precluded review by the Third Circuit's designation of the issue as non-jurisdictional both in timeliness (which diligence and subject matter are believed to have prevented) and now also in subject matter per se, despite it's standing as new evidence or, at the

least, partially new evidence supporting a valid claim of perjury.

Plaintiffs' motion, while it referred to 28 USC §1927 and Rule 11 motion, contained far less emphasis on the Rule 11 motion. Plaintiffs would also claim that it is in it's essence a request for the Court's inherent power. Fink v. Gomez, 239 F.3d 989 (9th Cir. 2001).

It requested, by conjunction with the motion to supplement and motion for opening of reconsideration, adjudication of a stark issue of misrepresentation to the Courts that was ultimately not expressly challenged until after the order deemed final. The trial Court has addressed the motion for sanctions in the decision and affirmed it. Plaintiffs at each Court requested evidentiary proceedings on the claims of falseness.

The Third Circuit has also found that plaintiff "did not supply any basis from which the District Court" could conclude that statements were made "for an improper purpose" such as "misleading the Court", yet this is exactly what plaintiff has stated, and he has claimed falseness made for this express purpose. Fink

The Third Circuit makes the above statement regarding the motion for sanctions and the motions for reconsideration and to supplement. However,

the motion to supplement the record (with proposed reply and motion to add counts attached) was the pleading that drew in the claim of falseness, subsequently addressed in greater detail in the motion for sanctions, into the proceeding, and it did so expressly, thus formally causing the continuum of major issues (present to any observer regardless) which causes the deciding of these to be the final order.

The Third Circuit was also requested to amend the conclusion that appeal, as opposed to a motion for sanctions, was the place to address the new evidence of falsity in the pleadings. These pleadings, as an inter-referenced set of pleadings, clearly addressed a strong claim of falsity in the District Court, that was raised in a very diligent manner as soon as it became evident. Plaintiffs, if waiting for appeal to address the perjurious nature of the proceedings below, stood the risk of seeing the issue waived or at the least having it diminished in importance, or for untimeliness.

While de novo review was feasible, it would be inappropriate for the Third Circuit to make factual determinations based upon conflicting evidence. Conflicting evidence is exactly what has resulted from the filing of the motion for sanctions and the motion.

Petitioner therefore requests review, reversal

or remand with instructions that the District Court hold an evidentiary hearing, as had loomed more and more necessary for the duration of the proceedings.

C. Whether a trust estate beneficiary, trustee ad litem, co-contractee, and additionally qualified son of the deceased may litigate torts on behalf of the deceased, that were experienced together with the deceased, pursuant to existing authorities, which do not delineate the specific circumstances present in this case.

The Third Circuit has stated in a footnote on page 2 of the opinion that James Schneller may not represent any other plaintiffs pro se, referring to their similar finding in a prior non precedental opinion appeal in this case. No party nor a Court may cite a non-precedental opinion nor a footnote therein. The original finding stated in the footnote was also a footnote, and was a sua sponte legal conclusion. The Circuit Court has, at the least, erroneously allowed itself to be prejudiced by plaintiff's efforts to represent the deceased

It is plaintiff's contention that the raising of this issue sua sponte exhibits prejudice and error of

law, and in fact the conclusion of law is markedly reversible error.

The finding that as a non-attorney, James D. Schneller may not appear as an attorney for any other parties, is opposable with sound argument. This is true both as to James's capacities on behalf of an estate, and regarding suing on behalf of the Pa.R.C.P. 2202 "parties entitled to relief" under the Pennsylvania wrongful death statute. 42 Pa.C.S.§§ 8301, 8302. Each of these may constitute a legal question of first impression. The authority stated, Osei-Afriyie v. Medical College of Pa., 937 F.2d 876, 882 (3d Cir. 1991), holds only that a non-attorney parent could not represent his children in a tort action in federal court." In relevant decision Collinsgru v. Palmyra Board of Education, 161 F.3d 225 (3d Cir., 1998), the Third Circuit found that parents could not represent their son pro se in an action under the "Disabilities Education Act, 20 U.S.C. § 1400 *et seq.* (1994 & Supp. 1997) These are limited to the parent-representing-child situation, which is far different from the within circumstance of adult child, who shared the harms.

In the decision Pridgen v. Anderson, 113 F.3d 391 (2d Cir. 1997), the Second Circuit has held that "an administratrix or executrix of an estate may not proceed pro se when the estate has beneficiaries and creditors other than the litigant. James Schneller, however, besides holding the

capacities stated in the first paragraph, is the last remaining living beneficiary of the two parental trusts, and the estates are closed according to the defendants Schneller and Zitomer, who domineered the estates. Any award in this litigation is certain to be requested to be unavailable to those, who are the only other feasible beneficiaries, under the Pennsylvania Slayer's Act 20 Pa.C.S.§8801. Moreso, the continuing trusts benefit only plaintiff, and plaintiff may lawfully represent the honor and the integrity of the trusts in their overall substance, especially since the sole trustee, First National Bank of Chester County, has repeatedly declined to do so. The deeds of trust in fact continue support for the other living spouse, on into that for James Schneller, causing to petitioner a right to defend the principal and litigate infractions inflicted on the principal (and the trustors) at any time, notably, at times of great mishap to some of the beneficiaries, survived now only by James.[1]

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[1] Plaintiff argued numerous reasons for capacity to sue, and one of which, the right to sue as co-contractee with the deceased for medical and legal services, enables capacity (and therefore a right to represent pro se) as the real party in interest. Pa R.C.P. 2002 ("a person with whom or in whose name a contract has been made for the benefit of another.")

The extraordinary circumstances of this case, including obstruction, ineffective prior counsel, oppression, and intent to ruin the case in the eyes of prospective counsel, are not present in any published decision deciding the claimed doctrine of forbiddance of prosecution by pro se litigants.

Petitioner therefore would argue on granting of the writ that this finding be reversed and that the bias it has inflicted on the appeal support reversal and remand.

VI. CONCLUSION

Petitioner has not made his full arguments in this petition but has sought to overcome any perception of the petition as inadequate, through volume. The case after all contains a volume of claims, and has experienced a volume of error. This case deals with outright deprivals of civil rights including the very rights to live, to defend life, to speak, to eat, to breathe, and to seek urgent medical care, outrageously deprived to a plaintiff.

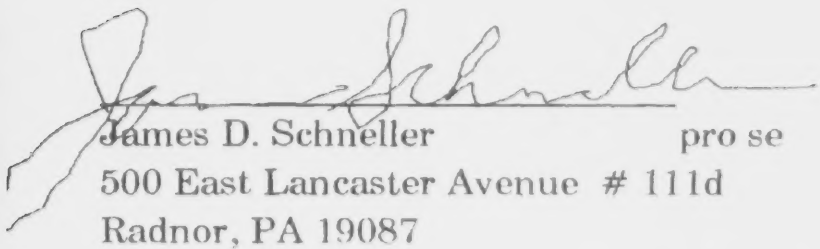
The Third Circuit, plaintiffs' last resort, has decided in a way that conflicts with the United States Constitution and with decisions of Circuit Courts, and this Court. The case is not worthy of dismissal.

There is, in the contested Orders, a furthering of deprival of access to justice, remedy for injury, and deprival of property to plaintiffs, in derogation of the United States Constitution. Injustice is apparent. To perform its high function in the best way, justice must satisfy the appearance of justice. In re Murchison, 75 S.Ct. 623 (U.S.Mich.,1955) Access to the courts encompasses all the means a defendant or petitioner might require to get a fair hearing from the judiciary on all the charges brought against him or grievances alleged by him. Com. ex rel. Matherly v. Frame, 21 Chest. 283 (Pa.Com.Pl.,1973) Abuse occurs where actions are taken that are intentional or "motivated by bias, bad faith, or partisan or personal motives unrelated to the merits of the matter before it." Rogers v. Bucks County Domestic Relations Section, 959 F.2d 1268, 1277 (3d Cir.1992).

Petitioner, for the above reasons, respectfully requests an order granting certiorari over this case, and review of the orders entered in the Court of Appeals, so that a fair and just determination may be made.

Petitioner has requested in the opening section that consolidation be considered and that deferral of the substance of the argument be permitted or that the Court await a nearly identical petition for writ of certiorari due in the Court in ten (10) days time.

Petitioner, in the alternative, requests that the Court vacate the order of the 3d Circuit dismissing the appeal No. 09-4372, and affirming denial of the motion for sanctions, based on the error of these decisions that is clear in the record as stated in this petition.



James D. Schneller pro se
500 East Lancaster Avenue # 111d
Radnor, PA 19087

Date: July 11, 2010 .

VIII. TEXTS OF PERTINENT STATUTES

Petitioner requests alleviation of the requirement to attached texts of pertinent statutes because no statute rises to the level of importance that would cause a need for highlighting it.

ALD-134 **NOT PRECEDENTAL**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No.09-4372

JAMES D. SCHNELLER, HEIRS AND BENEFICIARIES OF MARJORIE C. SCHNELLER, BY JAMES D. SCHNELLER, TRUSTEE AD LITEM ESTATE OF MARJORIE SCHNELLER, BY AND THROUGH JAMES D. SCHNELLER, TRUSTEE AD LITEM, MARJORIE ZITOMER, EXECUTRIX OF THE ESTATE OF MARJORIE SCHNELLER, ESTATE OF GEORGE H. SCHNELLER, BY AND THROUGH PERSONAL REPRESENTATIVE JAMES D. SCHNELLER

v.

PROSPECT PARK NURSING AND REHABILITATION CENTER, ITS OWNERS AND EMPLOYEES; MARJORIE ZITOMER; RICHARD SCHNELLER; T. SERGEANT PEPPER, ESQUIRE

James D. Schneller, Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania

(D.C. Civil No. 08-cv-05704)
District Judge: Honorable Lawrence F. Stengel

Submitted by the Clerk for Possible Dismissal for Lack of Jurisdiction
or Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
February 25,2010

Before: SLOVITER, AMBRO and SMITH, Circuit Judges

(Opinion filed: March 8, 2010)

OPINION

PER CURIAM

Appellant James D. Schneller, proceeding pro se, appeals from the District Court's dismissal of his action and denial of his post-judgment motions. For the reasons that follow, we will dismiss in part for lack of jurisdiction and otherwise summarily affirm the judgment of the District Court.

Schneller initiated the underlying civil action in the United States District Court for the Eastern

District of Pennsylvania in 2008.[1] In it, he primarily alleged that defendants committed medical and legal malpractice in rendering negligent services to his parents at the ends of their lives. By opinion and order entered on June26, 2009, the District Court dismissed all of his claims and ordered the case closed. On July 10, Schneller timely filed a motion for reconsideration which was denied on August 6, 2009. On August 11, Schneller filed a motion to "supplement the record," followed by a motion for sanctions and costs on September 1. The District Court denied Schneller's motion to supplement the record on September 4, 2009, and denied his motion for sanctions and costs on September 9, 2009. On October 8, 2009, Schneller filed a six-page document entitled "Plaintiffs' Motion for Leave to Appeal In Forma Pauperis" which detailed the errors allegedly made by the District Court in

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[1] Schneller filed his complaint pro se. In it, he purported to represent other persons and entities. As a pro se litigant, Schneller may not represent parties other than himself. See Osei-Afrivie v. Med. Coll. Of Pa., 937 F.2d 876, 882-83 (3d Cir. 1991) (holding that non-lawyer proceeding pro se could not represent his own children); 28 U.S.C. § 1654 (parties may proceed in federal court "personally or by counsel"). Accordingly, we will treat him as the sole Appellant in this appeal. See also Schneller v. Fox Subacute at Clara Burke, 317 F. App'x 135, 137 n.1 (3d Cir. 2008).

dismissing Appellant's complaint and denying his post-judgment motions and requested leave to appeal in forma pauperis. The District Court granted him leave to appeal in forma pauperis on October27, 2009, and Schneller filed a document entitled "Notice of Appeal" on November 10,2009.

Appellant seeks to appeal both the District Court's dismissal of his action and its denial of his post-judgment motions. The District Court's judgment dismissing the underlying action became final on August 6, 2009, when the District Court denied Appellant's timely-filed motion for reconsideration.[2] See 28 USC. §1291 (vesting jurisdiction in courts of appeals over "final decisions" of the district courts); Budinich V Becton Dickinson & Co., 486 U.S. 196, 199-200(1988) (holding that a final decision is one that ends the litigation on the merits and leaves nothing for the court to do but execute the

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[2] Because the motion for reconsideration was filed within ten business days of the District Court's entry of judgment, the time to file a notice of appeal from the June26, 2009 dismissal was tolled until the District Court denied the motion for reconsideration on August 4,2009. See former Fed. R. Civ. P.59(e) (amendment effective Dec. 1,2009). Appellant's subsequent motions to supplement the record and for sanctions do not fall within the subset of post-judgment motions which toll the time for filing a notice of appeal. See Fed. R. App. P. 4(a)(4)(A).

judgment, and that a question remaining to be decided after entry of such a decision does not affect its finality). Because Schneller failed to file a notice of appeal within thirty days of entry of that order, we lack jurisdiction over the District Court's June 26, 2009 opinion and order dismissing his action and its August 6, 2009 order denying his motion for reconsideration. See Fed. R. App. P. 4(a)(1); Bowles v. Russell, 551 U.S. 205 213(2007) (holding that the timely filing of a notice of appeal is a jurisdictional requirement).

The District Court's denials of Appellant's post-judgment motions are separately appealable. See Pennsylvania v. Flaherty, 983 F.2d 1267, 1276 (3d Cir. 1993) ("Post-judgment orders are final for purposes of § 1291 and immediately appealable because the policy against piecemeal review is unlikely to be undermined."). The Court denied Schneller's motion to supplement the record by order entered September 4, 2009. Because he failed to file a notice of appeal within thirty days of that denial, we also lack jurisdiction over his appeal with respect to that order. See Fed. R. App. P. 4(a)(1); Bowles, 551 U.S. at 213. However, Schneller's motion for sanctions was not denied until September 9, 2009. On October 8, 2009, Schneller filed a document entitled "Plaintiffs' Motion for Leave to Appeal In Forma Pauperis"

which specified those orders he wished to appeal, the grounds he wished to appeal them on, and the court he wished to appeal them to. The District Court should have treated this document as a notice of appeal. Fed. R. App. P. 3(c)(1); Masquerade Novelty v. Unique Indus., 912 F.2d 663, 665 (3d Cir. 1 has, within the time provided to file an appeal, filed documents that 'specify the party or parties taking the appeal; . . . the judgment, order or part thereof appealed from, and . the court to which the appeal is taken'"). Because this document was timely-filed with respect to the District Court's denial of Appellant's motions for sanctions, we retain jurisdiction over his appeal from that order. See Fed. R. App. P. 4(a)(1); Flaherty, 983 F.2d at 1276.

In his motion for sanctions and costs, Schneller argued that pursuant to Federal Rule of Civil Procedure 11 and 28 U.S.C. § 1927, Appellees should be sanctioned for filing frivolous and vexatious motions and pleadings for the purpose of causing unnecessary delay and increasing the cost of the litigation. While Schneller set forth the facts and legal arguments made by Appellees that he disagreed with, he did not provide any basis from which the District Court could have concluded that Appellees alleged those facts or made those arguments "for an improper purpose" or with the intent of "misleading the court." Schneller's motion

for sanctions was not the proper vehicle for challenging these assertions and arguments - appeal was. Because Schneller failed to timely appeal from the District Court's dismissal of his action and denial of his motion for reconsideration, we cannot consider these arguments at the present time.

Because Schneller's appeal presents no substantial question, we will summarily affirm the orders of the District Court denying the requested relief See 3d Cir. LAR 27.4; I.O.P. 10.6. Schneller's appeal from the District Court's dismissal of his action, denial of his motion for reconsideration, and denial of his motion to supplement the record is dismissed for lack of appellate jurisdiction. See Fed. R. App. P. 4(a)(1); Bowles 551 U.S. at 213.

ALD-134 **NOT PRECEDENTAL**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT
No.09-4372

JAMES D. SCHNELLER, HEIRS AND BENEFICIARIES OF MARJORIE C. SCHNELLER, BY JAMES D. SCHNELLER, TRUSTEE AD LITEM ESTATE OF MARJORIE SCHNELLER, BY AND THROUGH JAMES D. SCHNELLER, TRUSTEE AD LITEM, MARJORIE ZITOMER, EXECUTRIX OF THE ESTATE OF MARJORIE SCHNELLER, ESTATE OF GEORGE H. SCHNELLER, BY AND THROUGH PERSONAL REPRESENTATIVE JAMES D. SCHNELLER

v.

PROSPECT PARK NURSING AND REHABILITATION CENTER, ITS OWNERS AND EMPLOYEES; MARJORIE ZITOMER; RICHARD SCHNELLER; T. SERGEANT PEPPER, ESQUIRE

James D. Schneller, Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania

(D.C. Civil No. 08-cv-05704)
District Judge: Honorable Lawrence F. Stengel

Submitted by the Clerk for Possible Dismissal for Lack of Jurisdiction
or Summary Action Pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6
February 25,2010

Before: SLOVITER, AMBRO and SMITH, Circuit Judges

JUDGMENT

This cause came to be considered on the record from the United States District Court for the Eastern District of Pennsylvania for possible dismissal for lack of jurisdiction or summary action pursuant to Third Circuit LAR 27.4 and I.O.P. 10.6 on February 25, 2010. On consideration whereof; it is now hereby

ORDERED and ADJUDGED by this Court that the appeal is dismissed in part for lack of jurisdiction and the order of the District Court entered September 9, 2009, be and the same is hereby affirmed. All of the above in accordance

with the opinion of this Court.

ATTEST:

/s/ Marcia M. Waldron
Clerk

DATED: 8 March 2010

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

JAMES D. SCHNELLER, et al., CIVIL ACTION

Plaintiffs

v. NO. 08-5704

PROSPECT PARK NURSING &
REHABILITATION CENTER, et al.,
Defendants

FILED JUN 26 2009

MEMORANDUM

STENGEL, J. June 25, 2009

More than six years after the death of his elderly mother on March 31, 2002, James D. Schneller and allegedly four other plaintiffs[1] filed a pro se action

[1] These plaintiffs include: (1) Heirs and beneficiaries of Marjorie C. Schneller, by James D. Schneller, trustee ad/item; (2) Estate of Marjorie Schneller, by and through James D. Schneller, trustee ad/item;

against several defendants[2] whom be claims are legally responsible. The genesis of the case appears to be medical and legal malpractice as a result of the allegedly negligent services rendered to Mr. Schneller's parents during the last few months of their lives. In fact, in the majority of paragraphs introducing the defendants, the plaintiff indicates that "this action is an action in professional liability and intentional tort against this defendant." See Compl. ¶¶

4,9-13. The only exceptions are in the paragraphs for his brother and sister. Id.¶¶ 5-7. The

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and (3) Marjorie Zitomer executrix of the Estate of Marjorie Schneller (Miss Zitomer is Mr. Schneller's sister and also a defendant in this action). In a related case the Third Circuit noted: "Schneller filed his complaint pro se. He also purports to represent other persons and entities. Although Schneller is entitled to represent himself pro se, he 'may not appear pro se in the cause of another person or entity.'" Schneller et al. v. Crozer Chester Medical Center, et al, 276 Fed. Appx. 169, *170 n.1 (3dCir. 2008). Accordingly. I will refer to Mr. Schneller as the sole plaintiff in this case.

[2] These defendants include; (1) Prospect Park Nursing and Rehabilitation Center; (2) "its owners and employees;" (3) Marjorie Zitomer (4) Richard Schneller (the plaintiffs brother); and (5) T. Sergeant Pepper, Esq.

defendants have filed motions to dismiss. For the following reasons, I will grant these motions and dismiss this case.

1. BACKGROUND

In February 2004, Mr. Schneller began an action against these defendants in the Court of Common Pleas of the County of Delaware. The case was dismissed through entries of judgment non pros for failure to file Certificates of Merit as required by Rule 1042.3 of the Pennsylvania Rules of Civil Procedure. Schneller et al. v. Prospect Park Nursing & Rehabilitation Center et al., 2006 Pa. Dist. & Cnty. Dec. LEXIS 392 (2006). Mr. Schneller unsuccessfully attempted to re-open the case and/or strike the judgment of non pros. Id. He then appealed to the Pennsylvania Superior Court which affirmed without an opinion the entries of judgment. Schneller et al. v. Prospect Park Nursing & Rehabilitation Center. et al., 945 A.2d 781 (Pa.Super. 2007). The Pennsylvania Supreme Court denied his petition for allowance of appeal. Schneller et al. v. Prospect Park Nursing & Rehabilitation Center. et al., 2008 Pa. LEXIS 2398 (Pa. 2008).

The sixty (60) page complaint contains three-hundred seventy-three (373) paragraphs

purporting to provide the basis of the plaintiffs thirty-two (32) claims:

Count I A - Violation of the Assisted Suicide Funding Restriction Act of 1997

Count 1 B - Civil Action for Deprivation of Rights

Count 1 C - Conspiracy to Interfere with Civil Rights - Depriving Persons of Rights and Privileges

Count 1 D Conspiracy to Interfere with Civil Rights - Obstructing Justice and Intimidating Parties - Battery

Count 1 E - Neglect to Prevent Deprivation of Rights and Conspiracy for Deprivation of Rights

Count 1 F - Failure to Warn

Count 2 - Breach of Contract

Count 3 - Breach of Contract

Count 4 - Fraudulent Inducement of Contracts

Count 5 - Breach of Confidential ~d Fiduciary Relationship

Count 6 - Wrongful Death

Count 7 - Survival

Count 8 - Intentional Tort - Abuse of Power of Attorney

Count 9 - Intentional Tort - Abuse of Advanced Health Directive

Count 10 - Negligence Per Se (violation of numerous state and federal statutes)

Count 11 - Slander and Libel

Count 12 - Breach of Confidentiality

Count 13 - Survival - Negligent and Intentional Infliction of Emotional Distress
Count 14 - Survival - Fraud
Count 15 - Survival - Conspiracy
Count 16 - Survival Action - Punitive Damages
Count 17 - Professional Negligence - Medical
Count Is - Professional Negligence - Attorney and Firm
Count 19 - Survival - Negligent and Intentional Infliction of Emotional Distress to George Schneller
Count 20 - Survival - Fraud and Intentional Misrepresentation to George H. Schneller
Count 21 - Survival Action - Conspiracy Damaging to George R. Schneller
Count 22 - Survival Action - Punitive Damages for the Estate of George H. Schneller
Count 23 - Intentional Infliction of Emotional Distress
Count 24 - Conspiracy
Count 25 - Punitive Damages
Count 26 - Tortious Interference with Prospective Economic Advantage
Count 27 - Breach of Fiduciary Duty

Mr. Schneller also alleges violations of various regulations entitled Requirements for Long

Term Care Facilities. See 42 C.F.R. § 483.10, et seq.[3] Compl. ¶ 18d.

II. STANDARD FOR A MOTION TO DISMISS

A motion to dismiss under Rule l 2(b)(6) of the Federal Rules of Civil Procedure for failure to state a claim upon which relief can be granted examines the legal sufficiency of the complaint. Conley v. Gibson, 355 U.S. 41,45-46(1957). The factual allegations must be sufficient to make the claim for relief more than just speculative. Bell Atlantic Corn. v. Twombly, 550 U.S. 544, 555 (2007). In determining whether to grant a motion to dismiss a federal court must construe the complaint liberally, accept all factual allegations in the complaint as true, and draw all reasonable inferences

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[3] These provisions "contain the requirements that an institution must meet in order to qualify to participate as a [skilled nursing facility] in the Medicare program, and as a nursing facility in the Medicaid program. They serve as the basis for survey activities for the purpose of determining whether a facility meets the requirements for participation in Medicare and Medicaid." 42 C.F.R § 483.l(b). These regulations do not confer a private right of action. Accordingly, they provide no basis for jurisdiction pursuant to 28 U.S.C. § 1331.

in favor of the plaintiff. Id . see also D.P. Enters v. Bucks County Cmty.Col1., 725 F.2d 943,944 (3d Cir. 1984).

The Federal Rules of Civil Procedure do not require a plaintiff to plead in detail all of the facts upon which he bases his claim. Conley, 355 U.S. at 47. Rather, the Rules require a "short and plain statement" of the claim that will give the defendant fair notice of the plaintiffs claim and the grounds upon which it rests. Id. The "complaint must allege facts suggestive of [the proscribed] conduct." Twombly, 550 U.S. at 555. Neither "bald assertions" nor "vague and conclusory allegations" are accepted as true. See Morse v. Lower Merion School Dist., 132 F.Sd 902, 906 (3d Cir. 1997); Sterling v. Southeastern Pennsylvania Transy. Auth., 897 F. Supp. 893 (E.D. Pa. 1995). The claim must contain enough factual matters to suggest the required elements of the claim or to "raise a reasonable expectation that discovery will reveal evidence of those elements. Phillips v. County of Allegheny, 515 F.2d 224,234 (3d Cir. 2008) (quoting Twombly, 550 U.S. at 555).

A case may be also dismissed under Rules 12 (b)(1) and 12 (h)(3) of the Federal Rules of Civil Procedure "[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter...." Fed.R.Civ.P. 12(h)(3). Alternatively, a court choosing not to grant a motion to dismiss for lack of subject matter

jurisdiction may, under Rule 12(e), grant a motion for a more definitive statement if "a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading. . . ." Fed.R.Civ.P. 12(e).

Moreover, courts must liberally construe pro se complaints and "apply the applicable law, irrespective of whether [the] litigant has mentioned it by name." Higgins v. Bever, 293 F.3d 683, 688 (3d Cir. 2002). Thus5 a plaintiffs complaint, however inartfully pleaded, must be held to a less stringent standard than a formal pleading drafted by an attorney. Estelle v. Gamble, 429 U.S. 97,106 (1976).

III. DISCUSSION

The defendants argue, inter alia5 that the case should be dismissed because this court does not have subject matter jurisdiction. Federal courts are courts of limited jurisdiction, and they may only decide cases as authorized by Congress or the Constitution. District courts have subject matter jurisdiction over federal questions pursuant to 28 U.S.C. § 1331, in which Congress grants courts "original jurisdiction of all civil actions arising

under the Constitution, laws, or treaties of the United States."

Federal courts also have subject matter jurisdiction over cases where there is complete diversity of citizenship among the parties and the amount in controversy "exceeds the sum or value of$75,000, exclusive of interest and costs" pursuant to 28 U.S.C. §1332(a).[4] The requirement of complete diversity means that 'jurisdiction is lacking if any plaintiff and any defendant are citizens of the same state." Menan Co. v. Atl. Mut. Ins. Co., 147 F.3d 287, 290 (3d Cir. 1998) (citing Strawbridge v. Curtiss, 7 U~S. (3 Cranch) 267,2 L. Ed. 435(1806)).

When a motion to dismiss for lack of subject matter jurisdiction is before a court, "the person asserting jurisdiction bears the burden of showing

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[4] Title 28 U.S.C. § 1332(a) provides: The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of $75,000, exclusive of interest and costs, and is between: (1) citizens of different states; (2) citizens of a state and citizens or subjects of a foreign state; (3) citizens of different states and in which citizens or subjects of a foreign state are additional parties; and (4) a foreign state as plaintiff and citizens of a state or of different states.

that the case is properly before the court at all stages of litigation." Packard v. Provident Nat'l Bank, 994 F.2d 1039, 1045 (3d Cir. 1993). This burden is applicable to cases based on diversity jurisdiction as well, and in such cases a plaintiff must demonstrate complete diversity between the parties and that the amount in controversy requirement has been met. Quaker State Dyeing & Finishing Co., Inc., v. ITT Telephone Com., 461 F.2d 1140, 1143 (3d Cir. 1972) (citing McSparran v. Weist, 402 F.2d 867, 875 (3d Cir. 1968)).

Here, the plaintiff and Defendant Prospect Park are residents of Pennsylvania. There is clearly no diversity of citizenship. Thus, jurisdiction cannot be based on 28 U.S.C. § 1332. The defendants, however, also argue that the complaint fails to present a federal question sufficient to confer jurisdiction. Federal question jurisdiction exists in one of two circumstances: (1) where federal law creates the cause of action; or (2) where the complaint poses a substantial federal question. Sodi v. Discover Financial Services, 2004 U.S. Dist. LEXIS 24133, *8 (E.D. Pa. 2004). Here, the plaintiff's alleged bases for federal question jurisdiction fall into two categories: (1) alleged violations of federal statutes and regulations; and (2) alleged civil rights violations.

Mr. Schneller cites several federal statutes and regulations throughout his complaint. Of the thirty-two counts contained in the complaint,

however, only five counts attempt to set forth federal causes of action. The first count alleges a violation of the Assisted Suicide Funding Restriction Act of 1997, 42 U.S.C. § 14401, et seq. See Compl. ¶¶ 88-99. The defendants argue that this Act does not create a private right of action, and thus cannot provide the basis for jurisdiction. I agree.

If Congress intends to create a private cause of action under a federal statute, then federal courts should find a private cause of action under the given statute. Transamerica Mortgage Advisors. Inc. v. Lewis, 444 U.S. 11,15(1979). Congress' intent is determined by examining "the language or structure of a statute or the circumstances of its enactment." Id. "[W]hether a statute creates a cause of action, either expressly or by implication, is basically a matter of statutory construction." Id. If the language of the statute expressly gives a remedy then courts should be wary when they are requested to add an additional remedy that is not expressly provided for in the statute. Id.

The structure and language of this Act do not show any intent by Congress to establish a private cause of action. The purpose of the Act is "to continue current federal policy by providing explicitly that federal funds may not be used to pay for items and services (including assistance) the purpose of which is to cause (or assist in causing) the suicide, euthanasia, or mercy killing of any individual." 42

U.S.C. § 14401(1,). Mr. Schneller claims that jurisdiction is proper under this Act because Defendant Prospect Park applied funds appropriated by Congress including federal funds under certain grant programs, and federal advocacy grants, to pay for and provide for services which directly contributed to the assisting and causing of the death of Marjorie C. Schneller, by unlawful means including euthanasia, mercy killing and assisted suicide. See Compl. ¶ 93. Mr. Schneller's assertion is contrary to law.

The rationale for the enactment of this statute is to prevent federal funds from being used for the criminal and unlawful purpose of assisted suicide. See 42 U.S.C.A. §14401 (a)(2). There have never been any criminal charges in connection with the care and treatment of Marjorie Schneller, and the claims that the defendants engaged in some type of mercy killing are unfounded. Further, no court has found that Title 42 U.S.C. §14401, et seq., creates a private cause of action. Thus, because the Assisted Suicide Funding Restriction Act cannot form the basis of subject matter jurisdiction, I will dismiss Count lA.

The next four counts in the complaint allege the deprivation of civil rights pursuant to 42 U.S.C. §§ 1983, 1985, and 1986. Because they contemplate a private cause of action, these statutes provide subject matter jurisdiction to the court. Counts in

1C, 1D, and 1E set forth the plaintiffs civil rights claims against the defendants for alleged violations of his mother's rights guaranteed by the Fourteenth Amendment to the United States Constitution. Count 1B contains allegations that the defendants deprived Mrs. Schneller of life, liberty, and property by enforcing her advanced health care directive over Mr. Schneller's objection and causing her death. See Compl. ¶¶ 105-119. Count 1C claims that the defendants conspired to deprive Mrs. Schneller of rights and privileges including "her basic rights to eat, drink, and breathe," and her "rights to life, privacy, security, freedom of speech, freedom to write and communicate, right to locomotion, family interaction, rights to legal representation, to meaningful family visits, arid right to choose her daily regimen and health program." See Compl. ¶¶ 121-146. Count 1D alleges that the defendants "in their conspiracy to prevent by force, intimidation, and threat, intended to deprive classes of persons of the equal protection of the laws, or of equal privileges and immunities under the law," and that these acts constituted causes of action for intimidation, obstruction of justice, criminal assault, and criminal maiming. See Compl. ¶¶ 147-163. Finally, Count IE alleges that the defendants, "having knowledge that any and all of the wrongs conspired to be done, as enumerated in this complaint, were about to be committed, and having power to prevent or aid in preventing the

commission of the same, neglected or refused so to do." See Compl. ¶¶ 164-171.

The Fourteenth Amendment to the U.S. Constitution provides that "no State shall.. deprive any person of life, liberty, or property, without due process of law..." U.S. Const., Amend. 14, § 1 - The protections of the Fourteenth Amendment do not extend to private conduct abridging individual rights, no matter how unfair that conduct may be. National Collegiate Ath. Ass'n v. Tarkanian, 488 U.S. 179(1988). It is the duty of this court to ensure that the Fourteenth Amendment is invoked only when it can be said that the State is responsible for the specific conduct of which the plaintiff complains. Brentwood Acad. v. Tennessee Secondanry Sch. Athletic Ass'n, 531 U.S. 88, 296 (2001), Edmonson v. Leesville Concrete Co., 500 U.S. 614, 632 (1991); Blum v. Yaretsky, 457 U.S. 991(1982). If a defendant's conduct satisfies the state-action requirement of the Fourteenth Amendment, the conduct also constitutes action 'Under color of state law" for Section 1983 purposes. Brentwood Acad., 531 U.S. at 295 (citing Lugar v. Edmondson Oil Co., 457 U.S. 922(1982)).

Title 42 U.S.C. §1983 authorizes redress for violations of constitutional rights and provides, in pertinent part, that:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by . the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

42 U.S.C. §1983.

By its terms, Section 1983 does not create a substantive right; it merely provides a method for vindicating federal rights conferred by the United States Constitution and the federal statutes that it describes. Baker v McCollan, 43 U.S. 137 (1979). In order to establish a claim under Section 1983, a plaintiff must demonstrate (1) a violation of a right secured by the Constitution and the laws of the United States and that (2) the alleged deprivation was committed by a person acting under color of state law. American Mfrs. Mut. Ins. Co. v. Sullivan, 526 U.S. 40 (1999).

Here, Mr. Schneller fails to satisfy these requirements. Although a private party may cause a deprivation of a constitutional right, it is subjected to liability under Section 1983 only when

it does so under color of law. Flagg Bros. Inc. v. Brooks, 436 U.S. 149, 156(1978). Section 1983 excludes from its reach "merely private conduct," no matter how discriminatory or wrongful. American Mfs. Mut. Ins. Co., 526 U.S. at 50. The actions alleged here were not performed under color of state law, and the defendants are not and cannot be considered state actors.

The complaint alleges, however, that the defendants "have applied funds appropriated by Congress for the purpose of paying for the provision of health care services, federal finds under certain grant programs including Medicare and Medicaid, and federal advocacy grants, to pay for, provide, and contribute to payment or coverage, for health care items and service furnished." See Compl. ¶ 16. These allegations do not establish that the defendants were acting "under color of law" or were state actors. The traditional exclusive governmental function test requires that a private entity exercise powers traditionally and exclusively reserved to the State, such as holding an election or eminent domain. Wolotsky v. Huhn, 960 F.2d 1331,1335 (6th Cir 1992). The provision of hospital services is not a traditional public function exclusively reserved for the State. Shannon v. Shannon, 965 F.2d 542, 547 (7th Cir. 1992) ("hospital care is not an exclusive prerogative of the State).

When analyzing the exclusive government function test, the Supreme Court has held that the receipt of public finds and the performance of a function serving the public, alone, are not enough to make a private entity a state actor. Rendell-Baker v. Kohn, 457 U.S. 830, 840(1982); Black et al. v. Indiana School District, 985 F.2d 707,710-11 (3d Cir. 1993) (a school bus driver is not performing an exclusive government function, even though paid by the state and performing a service for the public). The fact that hospitals and nursing homes may be extensively regulated and may receive financial support from the government through Medicaid and Medicare does not make them state actors. Blum 457 U.S. at 1011. In Blum, the Supreme Court flatly rejected the argument that the State's payment of more than 90% of nursing home patients' medical expenses and the licensing of nursing homes does not create a symbiotic relationship between the state and nursing homes. Additionally, the vast majority of Courts of Appeals have determined that the recipient of federal construction funding, Medicare and Medicaid funds, and the existence of tax exemption, as well as state licensing requirements for non-profit hospitals, do not constitute state action under 42 U.S.C. § 1983. See Hodge v. Paoli Memorial Hospital, 576 F.2d 563 (3d Cir. 1978) (citing Schlein v. Milford Hospital. Inc. 561 F.2d

427 (2d Cir. 1977); Greco v. Orange Memorial Hospital Corporation, 513 F.2d 873 (5th Cir.), cert. denied, 423 U.S. 1000(1975); Jackson v. Norton-Children's Hospitals. Inc., 487 F.2d 502(6th Cir. 1973), cert. denied, 416 U.S. 1000(1974); Doe v. Bellin Memorial Hospital, 479 F.2d 756 (7th Cir. 1973); Briscoe v. Bock, 540 F.2d 392 (8th Cir. 1976); Watkins v. Mercy Medical Center, 520 F.2d 894(9th Cir. 1975); Ward v. St. Anthony Hospital, 476 F.2d 671 (10th Cir. 1973)).

Accordingly, the receipt of federal funding is not determinative of state action. Private entities are not transformed into state actors by the simple provision of funds. Because Mr. Schneller cannot establish state action, he cannot establish a cause of action under 42 U.S.C. § 1983 or related statutes, which provide a necessary conduit through which the plaintiff might recover for alleged federal rights violations perpetrated against him. Accordingly, 1 will dismiss the non-Commonwealth defendants from Counts lB, IC, ID, and IE.

If these federal claims were properly before me, they would still fail as untimely. Although Rule 12(b) does not explicitly permit the assertion of a statute of limitations defense by a motion to dismiss, the so-called "Third Circuit Rule" allows a

defendant to assert a limitations defense in a Rule 12 (b)(6) motion "if the time alleged in the statement of a claim shows that the cause of action has not been brought within the statute of limitations.'" Zankel v. Temple University, 245 Fed. Appx. 196, 198 (3d Cm 2007) (citing Robinson v. Johnson, 313 F.3d 128, 135 (3d Cir. 2002)). Because these federal statutes do not set forth a specific statute of limitations, the claims are subject to Pennsylvania's two-year statute of limitations. City of Rancho Palos Verdes v. Abrams, 544 U.S. 113, 124 (2005) (where a plaintiff relies upon federal statutes in asserting a claim, and those statutes do not contain a specific provision regarding the time within which an action may be brought, federal courts apply the statute of limitations governing suits for personal injury in which the action arises); Wilson v. Garcia, 471 U.S. 265, 275 (1985); see also Lake v. Arnold, 232 F.3d 360,368 (3d Cir. 2000) (actions arising under Sections 1983 and 1985 are subject to the statute of limitations prescribed for personal-injury actions in the state in which the relevant events occurred). Pennsylvania's personal injury statute of limitations is two years. Vojtasek v. Diocese of Allentown, 916 A.2d 637, 640 (Pa. Super. 2006); 42 Pa.C.S.A. § 5524(2). The death of Marjorie Schneller is a discreet and identifiable event, and the statute of limitations on any claims arising from her death or any of the alleged events that precipitated her death, began to arise on March 31, 2002. This action was commenced on December 5

2008, more than six (6) years later, and is thus untimely by over four (4) years. Accordingly, Mr. Schneller's federal claims would be time-barred if they were properly before me.

Mr. Schneller claims that the court has supplemental jurisdiction over his remaining state law claims pursuant to 28 U.S.C. § 1367(a), which provides:

[I]n any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in like action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

The state law claims in this amended complaint substantially predominate over the federal claims. See 28 U.S.C. § 1367(c)(2). The federal claims in the amended complaint will be dismissed. 28 U.S.C. § 1367(c)(3). Accordingly, I decline to exercise supplemental jurisdiction over the state law claims in this case.

I note, however, that if the state law claims were properly before me, they would still be

dismissed as untimely. The plaintiff and eleven of the thirteen defendants are residents of Pennsylvania, and all relevant events in this case arose in Pennsylvania. It is well established that a federal court shall apply Pennsylvania substantive law and federal procedural rules to the resolution of state law claims. See Erie Railroad Comnany v. Tomkins, 304 U.S. 64 (1938)). Accordingly, Pennsylvania law governs the disposition of the plaintiffs state law claims. In Pennsylvania, the applicable two-year statute of limitations for tort claims provides that: The following actions and proceedings must be commenced within two years:

(1)An action for assault, battery, false imprisonment, false arrest, malicious prosecution or malicious abuse of process.
(2)An action to recover damages for injuries to the person or for the death of an individual caused by the wrongful act or neglect or unlawful violence or negligence of another.
(3)An action for taking, detaining or injuring personal property, including actions for specific recovery thereof . . .
(7)Any other action or proceeding to recover damages for injury to person or property which is founded on negligent, intentional, or otherwise tortious conduct or any other action or proceeding sounding in trespass, including deceit or fraud, except an action or proceeding subject to another

limitation specified in this subchapter.

Title 42 Pa. C.S.A. § 5524. Thus, under § 5524(2), because the case was filed over four years after Mrs. Schneller's death, the plaintiffs state law tort claims arising from her death or the care she received in the months preceding her death would also be time--barred.

Likewise, all contract claims in this amended complaint would also be untimely because under Pennsylvania law, an action for breach of contract is subject to a four-year statute of limitations. 42 Pa.C.S.A. § 5525. Mrs. Schneller died on March 31,2002, and the case was filed over four years later. Thus, the plaintiffs state law contract claims arising from the death of his mother or the care she received would also be time-barred.

In conclusion, while the plaintiff attempts to bring federal claims in combination with his predominant state law claims, the federal claims will be dismissed for the reasons set forth in this memorandum. Finally, I decline to exercise supplemental jurisdiction over the state law claims, all of which are untimely.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNA.

JAMES D. SCHNELLER, et al., CIVIL ACTION
Plaintiffs

v. NO. 08-5704

PROSPECT PARK NURSING &
REHABILITATION CENTER, et al.,
Defendants

FILED JUN 26 2009

ORDER

AND NOW, this 25 th day of June, 2009, upon consideration of the defendants' motions to dismiss (Documents #4, 6, 15), and the plaintiff's response thereto (Documents #9, 16, 17), it is hereby ORDERED that the motions to dismiss are GRANTED in their entirety.

IT IS FURTHER ORDERED that all remaining motions in this case are DENIED as moot. The Clerk of Court is directed to mark this action CLOSED for all purposes

BY THE COURT:

_____/s/_____

LAWRENCE F. STENGEL

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

No.09-4372

JAMES D. SCHNELLER, HEIRS AND BENEFICIARIES OF MARJORIE C. SCHNELLER, BY JAMES D. SCHNELLER, TRUSTEE AD LITEM ESTATE OF MARJORIE SCHNELLER, BY AND THROUGH JAMES D. SCHNELLER, TRUSTEE AD LITEM, MARJORIE ZITOMER, EXECUTRIX OF THE ESTATE OF MARJORIE SCHNELLER, ESTATE OF GEORGE H. SCHNELLER, BY AND THROUGH PERSONAL REPRESENTATIVE JAMES D. SCHNELLER

v.

PROSPECT PARK NURSING AND REHABILITATION CENTER, ITS OWNERS AND EMPLOYEES; MARJORIE ZITOMER; RICHARD SCHNELLER; T. SERGEANT PEPPER, ESQUIRE

James D. Schneller, Appellant

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil No. 08-cv-05704)
District Judge: Honorable Lawrence F. Stengel

Present: SCIRICA, Chief Judge, SLOVITER, McKEE, RENDELL, BARRY, AMBRO, FUENTES, SMITH, FISHER, CHAGARES, JORDAN, HARDIMAN and GREENAWAY, Circuit Judges

SUR PETITION FOR EN BANC REHEARING

The petition for rehearing filed by Appellant having been submitted to the judges who participated in the decision of this Court, and to all the other available circuit judges in active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges ofthe circuit in regular active service not having voted for rehearing by the court en banc, the petition for rehearing is DENIED.

By the Court,

/s/ Thomas L Ambro, Circuit Judge

Dated: 12 April 2010

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

JAMES D. SCHNELLER, et al., CIVIL ACTION

Plaintiffs

v. NO. 08-5704

PROSPECT PARK NURSING &
REHABILITATION CENTER, et al.,
Defendants

FILED AUG 06 2009

ORDER

STENGEL, J.

AND NOW, this 5th day of August 2009, upon consideration of the plaintiffs motion for reconsideration (Document #23), and the defendants' response thereto (Documents #24), it is hereby ORDERED that the motion is DENIED.[1]

BY THE COURT.

_____/s/_____

LAWRENCE F. STENGEL.

1- On June26, 2009, I dismissed the above-captioned case. (Documents #21 and #22). The plaintiff filed a motion for reconsideration to which the defendants responded. Granting a motion for reconsideration is appropriate "if the party seeking reconsideration shows at least one of the following grounds; (1) an intervening change in the controlling law; (2) the availability of new evidence that was not available when the court granted the motion . . . or (3) the need to correct a clear error of law or factor to prevent manifest injustice." Max's Seafood Cafe' ex rel. Lou-Ann. Inc. *v.* Quinteres, 176 F.3d 669, 677 (3d Cir. 1999) citing N. River Ins Co v. CIGNA Reins. Co., 52 F.3d 1194, 1218 (3d Cr. 1995), see also Cont'l Cas. Co. v. Diversified Indus. Inc., 884 F. Supp. 937, 943 (E.D. Pa. 1995) (because federal courts have a strong interest in the finality of judgrnents, motions for reconsideration should be granted sparingly). The plaintiff has shown none of those grounds. There

was no intervening change in the controlling law, no new evidence presented, or no clear error of law or fact in my previous Memorandum and Order dismissing the actions. Accordingly, I will deny the motion.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

JAMES D. SCHNELLER, et al., CIVIL ACTION

Plaintiffs

v. NO. 08-5704

PROSPECT PARK NURSING &
REHABILITATION CENTER, et al.,
Defendants

FILED SEP 4 2009

ORDER

STENGEL, J.

AND NOW, this 3d day of September, 2009, upon consideration of the plaintiffs motion to supplement the record (Document #26), it is hereby ORDERED that the motion is DENIED.

BY THE COURT.

_____/s/_____

LAWRENCE F. STENGEL

1 On June 26, 2009, I granted the defendants' motions to dismiss this case in its entirety. See Documents #21 and 22. On August 6, 2009, I denied the plaintiff's motion for reconsideration of that dismissal. See Document #25. The case is terminated and further supplementation of the record is unnecessary. Accordingly, I will deny this motion.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT
OF PENNSYLVANIA

JAMES D. SCHNELLER, et al., CIVIL ACTION

Plaintiffs

v. NO. 08-5704

PROSPECT PARK NURSING &
REHABILITATION CENTER, et al.,
Defendants

FILED SEP 09 2009

ORDER

STENGEL, J.

AND NOW, this 3d day of September, 2009, upon consideration of the plaintiffs "motion for sanction and for costs to defendants for vexatious, frivolous, unsupported, and dilatory litigation" (Document #27), it is hereby ORDERED that the motion is DENIED.

BY THE COURT.

_____/s/_____

LAWRENCE F. STENGEL.

Supreme Court, U.S.
FILED

IN THE
SUPREME COURT OF THE UNITED STATES
No. 10-227

JAMES D. SCHNELLER,

Petitioner,

v.

PROSPECT PARK NURSING AND REHABILITATION CENTER, MARJORIE ZITOMER, RICHARD SCHNELLER, AND T. SERGEANT PEPPER, ESQUIRE

Respondents.

On Petition for Writ of Certiorari
To The Supreme Court of the United States

Response of Marjorie Zitomer, Richard Schneller and T. Sergeant Pepper, Esquire to the petition for a writ of certiorari filed by Petitioner, James D. Schneller

---

KANE, PUGH, KNOELL, TROY & KRAMER, LLP
BY: PAUL C. TROY, ESQ.
PA I.D. # 60875
510 SWEDE ST.
NORRISTOWN, PA 19401
(610) 275-2000
Attorney for Respondents Marjorie Zitomer, Richard Schneller and T. Sergeant Pepper, Esquire

I. QUESTION(S) PRESENTED

Has the Petitioner presented a compelling reason for the Court to grant Certiorari to review the Entry of Judgment of the United States Court of Appeals for the Third Circuit given that:

A. The factual record supports the finding of the United States Court of Appeals for the Third Circuit that Petitioner's appeal was dismissed for lack of jurisdiction, absence of private right of action and statute of limitations.

B. The factual record supports the finding of the United States Court of Appeals for the Third Circuit that the United States District Court of the Eastern District of Pennsylvania properly denied Petitioner's Motion to Supplement the Record.

C. The factual record supports the finding of the United States Court of Appeals for the Third Circuit that the United States District Court of the Eastern District of Pennsylvania properly denied Petitioner's Motion for Sanctions.

D. The factual record supports the denial of Petitioner's Application for Rehearing *En Banc* by the United States Court of Appeals for the Third Circuit.

E. The Entry of Judgment of the United States Court of Appeals for the Third Circuit does not present an unsettled important question of law; and,

F. In the instant matter, the United States Court of Appeals for the Third Circuit has not decided an important federal question that conflicts with relevant decisions of the United States Supreme Court.

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III. CONCISE STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT

In his Petition for Writ of Certiorari, Petitioner fails to set forth a basis for jurisdiction in the United States Supreme Court. As stated in the Rules of the Supreme Court of the United States Rule 10, "a petition for a writ of certiorari will be granted only for compelling reasons."

In this case, The United States District Court for the Eastern District of Pennsylvania granted a Motion to Dismiss for lack of jurisdiction, absence of private right of action and statute of limitations on June 26, 2009. Petitioner then filed a Motion for Amendment and Reconsideration, and a 'Motion to Supplement the Record' to reply to responses for Motion for Reconsideration, a Motion to Amend to Add a Declaratory Action and a Motion for Sanctions and for costs pursuant to 28 U.S.C §1927 and F.R.C.P. 11. Plaintiff claimed that false and misleading claims were made in responses therefore reconsideration and sanctions were warranted. Petitioner's Motion for Reconsideration was denied on August 6, 2009. The District Court denied the Motion to Supplement the Record and the

Motion for Sanctions on September 4, 2009 and September 9, 2009 respectively. Petitioner then filed a Motion for Leave to Appeal In Forma Pauperis which was granted, and filed a Notice of Appeal to the Third Circuit Court of Appeals. The United States Court of Appeals for the Third Circuit dismissed Petitioner's Appeal from the Judgment of the United States District Court of the Eastern District of Pennsylvania for lack of jurisdiction on March 8, 2010. Plaintiff filed a Motion for Rehearing *en banc*, requesting leave to file appeal out of time in the alternative. The motion was denied on April 12, 2010.

The Entry of Judgment of the United States Court of Appeals for the Third Circuit does not present an unsettled important question of law. Furthermore, the United States Court of Appeals for the Third Circuit has not decided an important federal question that conflicts with relevant decisions of the United States Supreme Court. Therefore, there is no basis for jurisdiction in this Court.

IV. COUNTER – STATEMENT OF THE CASE

This matter derives from a civil action

that was filed in the United States District Court for the Eastern District of Pennsylvania by the Petitioner, James D. Schneller on December 5, 2008[1]. The mother of Petitioner James D. Schneller (hereinafter referred to as "Schneller") died on March 31, 2002. Schneller initiated the instant action[2] by filing a

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[1] In February 2004, Petitioner began an action against these Defendants in the Court of Common Pleas of the County of Delaware. The case was dismissed through entries of judgment of non pros for failure to file Certificates of Merit pursuant to Rule 1042.3 of the Pennsylvania Rules of Civil Procedure. Schneller et al. v. Prospect Park Nursing & Rehabilitation Center et al., 2006 Pa. Dist. 7 Cnty. Dec. LEXIS 392 (2006). Petitioner attempted to re-open the case and/or strike judgment of non pros but was unsuccessful. Id. He appealed to the Superior Court of Pennsylvania which affirmed the lower court's judgment. Schneller et al v. Prospect Park Nursing & Rehabilitation Center, et al., 945 A.2d 781 (Pa. Super. 2007). The Pennsylvania Supreme Court denied his petition for allowance of appeal. Schneller et al., v. Prospect Park Nursing & Rehabilitation Center, et al., 2008 Pa. LEXIS 2398 (Pa. 2008).

[2] Schneller has proceeded *pro se* from the inception of the action. In his Complaint, he purported to bring the action on behalf of: (1) Heirs and beneficiaries of Marjorie C. Schneller, by James D. Schneller, trustee ad litem; (2) Estate of Marjorie Schneller, by and through James D. Schneller, trustee ad litem; and (3) Marjorie Zitomer, executrix of the Estate of Marjorie Schneller (Miss Zitomer is Mr. Schneller's sister and also defendant in this action). It is well-settled that a *pro se* litigant is not permitted to represent the interests of other parties. In a related case the Third Circuit noted, "Schneller filed his complaint *pro se*. He also

Complaint in which he named five defendants, including Prospect Park Nursing and Rehabilitation Center, "its owners and employees", Marjorie Zitomer, Richard Schneller (Petitioner's brother) and T. Sergeant Pepper, Esq. He alleged that defendants had committed medical and legal malpractice in rendering negligent end of life care and service to his parents. Based upon these allegations of facts, Schneller's Complaint contains the following counts:

Count IA	Violation of the Assisted Suicide Funding Restriction Act of 1997
Count 1B	Civil Action for Deprivation of Rights
Count 1C	Conspiracy to Interfere with Civil Rights-Depriving Persons of Rights and Privileges
Count 1D	Conspiracy to Interfere with Civil Rights-Obstructing Justice and Intimidating Parties- Battery

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purports to represent other persons and entities. Although Schneller is entitled to represent himself pro se, he may not appear *pro se* in the cause of another person or entity." Schneller et al. v. Crozer Chester Medical Center, et al, 276 Fed. Appx. 169, 170 n.1 (3d. Cir. 2008).

Count IE	Neglect to Prevent Deprivation of Rights and Conspiracy for Deprivation of Rights
Count IF	Failure to Warn
Count 2	Breach of Contract
Count 3	Breach of Contract
Count 4	Fraudulent Inducement of Contracts
Count 5	Breach of Confidentiality- Fiduciary Relationship
Count 6	Wrongful Death
Count 7	Survival
Count 8	Intentional Tort- Abuse of Power of Attorney
Count 9	Intentional Tort- Abuse of Advanced Health Directive
Count 10	Negligence Per Se (Violation of numerous state and federal statutes)
Count 11	Slander and Libel
Count 12	Breach of Confidentiality
Count 13	Survival- Negligent and Intentional Infliction of Emotional Distress

Count 14	Survival-Fraud
Count 15	Survival-Conspiracy
Count 16	Survival Action- Punitive Damages
Count 17	Professional Negligence- Medical
Count 18	Professional Negligence- Attorney and Firm
Count 19	Survival Negligent and Intentional Infliction of Emotional Distress to George Schneller
Count 20	Survival- Fraud and Intentional Misrepresentation to George H. Schneller
Count 21	Survival Action- Conspiracy Damaging to George R. Schneller
Count 22	Survival Action- Punitive Damages for the Estate of George H. Schneller
Count 23	Intentional Infliction of Emotional Distress
Count 24	Conspiracy
Count 25	Punitive Damages
Count 26	Tortious Interference with Prospective Economic Advantage

Count 27 Breach of Fiduciary Duty

On June 26, 2009, the United States District Court for the Eastern District of Pennsylvania dismissed all of his claims for failure to state a basis for jurisdiction and statute of limitations and his case was closed. On July 10, 2009, Schneller filed a Motion for Reconsideration which was denied on August 6, 2009. On August 11, 2009, Schneller filed a Motion to Supplement the Record. On September 1, 2009, he filed a Motion for Sanctions and Costs. His Motion to Supplement the record was denied on September 4, 2009. His Motion for Sanctions and Costs was denied on September 9, 2009. He failed to file any Notice of Appeal until October 8, 2009, when he filed a Motion for Leave to Appeal in Forma Pauperis, which was granted on October 27, 2009. Schneller filed a formal Notice of Appeal on November 10, 2009.

On March 8, 2010, The U.S. District of Court of Appeals affirmed the orders of the District Court. Schneller's appeal from the

District Court's dismissal of his action, denial of his motion for reconsideration and denial of his motion for to supplement the record were dismissed for lack of appellate jurisdiction. He failed to file a timely notice of appeal. Schneller's appeal from the Motion for

Sanctions was also denied. Schneller now seeks Certiorari in this Honorable Court.

V. SUMMARY OF THE ARGUMENT

The Court of Appeals for the Third Circuit properly dismissed Schneller's Appeal from the District Court's dismissal of the Complaint in its entirety. Schneller failed to file a Notice of Appeal in a timely matter. His Motion for Reconsideration of the District Court's dismissal was denied on August 6, 2009. He was required to file a Notice of Appeal within thirty days of the entry of that order. He failed to file any Notice of Appeal until October 8, 2009, when he filed a Motion for Leave to Appeal in Forma Pauperis, which was granted on October 27, 2009. He failed to file his formal Notice of Appeal until November 10, 2009. Schneller's Motion to Supplement the Record and Motion for Sanctions and Costs do not fall in the category of post-judgment motions which toll the time for filing a notice of appeal under Federal Rule of Appellate Procedure 4(a)(4)(A). Even if the Court of Appeals had found jurisdiction, the District Court was correct in dismissing Schneller's Complaint for lack of subject matter jurisdiction and untimeliness.

The Court of Appeals for the Third Circuit also properly affirmed the District Court's denial of Schneller's post-judgment motions. The Court of Appeals was correct in not considering Schneller's Motion to Supplement the Record for lack of jurisdiction. Schneller failed to file a Notice of Appeal from the District Court's September 4, 2009 denial of the Motion within thirty days. Instead, he filed a "Motion for Leave to Appeal In Forma Pauperis" on October 8, 2009, beyond the required thirty days. Moreover, Schneller was required to address the allegations made in his Motion for Sanctions and Costs on appeal to the District Court's dismissal of the Complaint. Therefore, the Court of Appeals properly found that Schneller's arguments for sanctions could not be considered for lack of jurisdiction.

The Court of Appeals for the Third Circuit properly denied Schneller's Motion for an *en banc* rehearing. Schneller did not assert any issues of exceptional importance or necessity that warranted consideration by the full court.

The Court of Appeals for the Third Circuit correctly found that Schneller as a pro se litigant may not represent parties other than himself. 28 U.S.C. 1654 clearly states that

parties may proceed in federal court "personally or by counsel". Under statutory and case law, Schneller was the sole appellant in his Third Circuit appeal.

Finally, in the Petition for Writ of Certiorari, Schneller fails to set forth a basis for jurisdiction in the United States Supreme Court. As stated in the Rules of the Supreme Court of the United States Rule 10, "a petition for a writ of certiorari will be granted only for compelling reasons." The Entry of Judgment of the United States Court of Appeals for the Third Circuit does not present an unsettled important question of law. Furthermore, the United States Court of Appeals for the Third Circuit has not decided an important federal question that conflicts with relevant decisions of the United States Supreme Court. Therefore, there is no basis for jurisdiction in this Court.

VI. ARGUMENT

A. THE COURT OF APPEALS PROPERLY DISMISSED PETITIONER'S APPEAL OF THE DISTRICT COURT'S DISMISSAL OF THE COMPLAINT FOR LACK OF APPELLATE JURISDICTION SINCE HE FAILED TO TIMELY FILE HIS NOTICE OF APPEAL.

Schneller argues that the Third Circuit abused its discretion by erroneously dismissing his appeal. Thus, he believes that the Court of Appeals acted contrary to other panel decisions and he was deprived of a full review. He asserts that this matter involves questions of public importance. However, Schneller's appeal was properly dismissed because his Notice of Appeal was filed well outside of the deadline provided by the Federal Rules of Appellate Procedure. Under Fed. R. App. P. 4(a)(1)(A) and 4(a)(4)(A)(iv), a party has thirty days from the date a court disposes of a motion seeking to alter or amend a judgment to file a notice of appeal. It is well established that "the time limits for filing a notice of appeal are jurisdictional in nature." Bowles v. Russell, 551 U.S. 205 (2007).

The District Court dismissed Schneller's Complaint on June 26, 2009. On July 10, 2009, Schneller filed a Motion for Reconsideration which was denied on August 6, 2009. The District Court's August 6, 2009 order was a final decision. A final decision is one that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment and that a question remaining to be decided after entry of such a decision does not affect its finality. Budinch v. Becton, Dickinson & Co., 486 U.S. 196 (1988). The time to file a Notice of Appeal from the June 26, 2009 appeal was tolled until the District Court denied the motion for reconsideration. Fed. R. App.P. 4(a)(4)(A)(iv). A timely motion to alter or amend a "judgment" that is an appealable interlocutory order tolls the time for filing a notice of appeal. Marie v. Allied Home Mortg. Corp., 402 F.3d 1 (1st Cir. 2005). *See also*, Lichtenberg v. Besicorp Group, Inc , 204 F.3d at 400-01 (2nd Cir. 2000); Rogue-Rodriguez v. Lema Moya, 926 F.2d 39, 41 (6th Cir. 1984); Denly v. Shearson/Am. Express, Inc., 733 F.2d 39, 41 (6th Cir. 1984). The thirty-day clock restarts after the order denying the motion to alter or amend the judgment. Fed. R. App. P. 4(a)(4)(A).

Schneller had thirty days to file a notice of appeal from the order denying his Motion for Reconsideration but he failed to do so. He failed to file his 'Motion for Leave to Appeal in Forma Pauperis" until October 8, 2009. His formal Notice of Appeal was not filed until November 10, 2009. Neither filing was made within the required thirty day timeframe. Thus, the Court of Appeals properly declined to exercise jurisdiction over Schneller's appeal.

Schneller argues that his post-judgment motions should have tolled his time for filing a notice of appeal. However, this argument is meritless since his subsequent motions to supplement the record pursuant to Fed. R. Civ. P. 11 and 15(a) and for sanctions and costs pursuant to Fed. R. Civ. P. 11 and 28 U.S.C. 1927 do not fall within the subset of post judgment motions which toll the time for filing a notice of appeal. See Fed. R. App. P. 4(a)(4)(A)[3]. Thus, the Circuit Court properly did

[3] If a party timely files in the District Court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion: (i) for judgment

not exercise jurisdiction over the District Court's June 26, 2009 opinion and order dismissing the Complaint or the August 6, 2009 order denying the motion for reconsideration.

1. Even if the Court of Appeals had found jurisdiction over Schneller's appeal, the District Court properly dismissed the Complaint for lack of subject matter jurisdiction and untimeliness.

Schneller argues that the Court of Appeals decided in a way that conflicts with the United States Constitution and other decisions of the Appeals Court and This Honorable Court. Even if the Circuit Court had found jurisdiction over The District Court, the Order dismissing Schneller's Complaint was appropriate. In fact, the dismissal of Schneller's actions from the Complaint was required for a variety of reasons. Schneller failed to establish diversity jurisdiction, and

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under rule 50(b); (ii) to amend or make additional factual findings under Rule 52(b); (iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58; (iv) to alter or amend the judgment under Rule 59; (v) for a new trial under Rule 59; (vi) for relief under Rule 60 if the motion is filed no later than 28 days after the Judgment is entered. Fed. R. App.P. 4(a)(4)(A) i-vi.

moreover, he has failed to set forth a federal question.

> Federal courts are of limited jurisdiction and may only decide cases authorized by Congress or the Constitution. There are two types of jurisdiction which the district court need: jurisdiction over the person, and subject matter jurisdiction. Subject matter jurisdiction arises when a federal question is involved, see 28 U.S.C. §1331, or when there is complete diversity of citizenship among the parties and the amount in controversy exceeds $75,000. See 28 U.S.C. §1332(a); Menan Co. v. Atl. Mut.Ins. Co., 147 F.3d 287, 290 (3d Cir. 1998) (citing Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267, L.Ed. 435 (1806)).

There is no issue of whether the District Court had jurisdiction over all defendants in this case. Thus, the issue on appeal is whether the District Court properly found that it lacked subject matter jurisdiction. Schneller and all of the Defendants are residents of Pennsylvania. Thus, complete diversity of citizenship is clearly lacking. Accordingly, the District Court properly found that it could not base subject matter jurisdiction on diversity of citizenship under 28 U.S.C. §1332(a).

Moreover, Schneller failed to present a sufficient federal question in accordance with 28 U.S.C. §1331. Federal jurisdiction exists inone of two circumstances: "(1) where federal law creates the cause of action; or (2) the complaint poses a substantial federal question." Sodi v. Discover Financial Services, 2004 U.S. Dist. LEXIS 24133, 8 (E.D.Pa.2004). "The presence or absence of federal-question jurisdiction is governed by the 'well pleaded complaint rule', which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." Berne Corp. v. Government of the Virgin Islands, 570 F3d 130, 136 (3d. Cir. 2009). "For purposes of federal question jurisdiction, a claim arises under federal law if it is apparent from the face of the complaint that a cause of action was created by federal law." Rokhvarg v. Dep't of Cmty. Affairs, 2010 U.S. App. LEXIS 2243 at 3 (3d Cir. 2010).

Schneller attempted to set forth a federal cause of action to the extent that he alleged a violation of the Assisted Suicide Funding Restriction Act of 1997, 42 U.S.C. §14401, et seq. However, this Act does not create a private right action, and thus does not support federal question jurisdiction. To determine whether Congress intended to create a private cause of

action under a federal statute, one should examine the language and circumstances surrounding its enactment. See Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11, 15 (1979). Whether a statute creates a particular cause of action, "either expressly or by implication is basically a matter of statutory construction." Id. There is no private cause of action under this statute either expressly or by implication.

Schneller also asserted civil claims against Respondents including under 42 U.S.C. §§ 1983, 1985 and 1986. In Count1B, Schneller asserts civil claims alleging deprivations of life, liberty and property. In Counts 1C, ID and IE of the Complaint, Schneller attempts to set forth civil rights claims against Respondents for violations of Fourteenth Amendment rights.

In order to establish a prima facie case under 42 U.S.C. §1983, a plaintiff must demonstrate "(1) a person deprived him of a federal right; and (2) a person who deprived him of that right acted under color of state or territorial law." Groman v. Township of Manalapan, 47 F.3d 628, 633, n.4 (3d Cir. 1995) (citing Gomez v. Toledo, 446 I.S. 635, 640 (1980)). Schneller failed to satisfy these requirements. A private actor may cause a deprivation of a constitutional right, however

said actor is only subject to liability under Section 1983 when it does so under color of state law. Flagg Bros., Inc. v. Brooks, 436 U.S. 149, 156 (1978). In the case *sub judice*, the alleged actions of Respondents were not performed under color of state law, and thus they cannot be considered state actors. As Schneller failed to establish a cause of action under 42 U.S.C. §1983 or related statutes, a basis of for federal question jurisdiction does not exist.

In addition to the lack of appropriate federal question jurisdiction, the federal claims were also barred by the applicable two year Statute of Limitations. Since the federal statutes in issue did not incorporate specific Statutes of Limitations, Pennsylvania's two year limitations period is applicable. *See* City of Rancho Palos Verdes v. Abrams, 544 U.S. 113, 124 (2005). (Where a plaintiff relies upon federal statutes in asserting a claim, and those statutes do not contain a specific provision regarding the time within which an action may be brought, federal courts apply the statute of limitations governing suits for personal injury in which the action arises). Moreover, actions brought under 42 U.S.C. §§ 1983, 1985 and 1986 are subject to the statute of limitations prescribed for personal injury actions in the state in which the relevant actions occurred. See Lake v. Arnold, 232 F.3d 360, 368 (3d Cir.

2000). Schneller is well beyond the applicable statutory period, as this cause of action arises out of his mother's death on March 31, 2002 and the events preceding that date

Accordingly, the District Court did not abuse its discretion or commit an error of law by dismissing Schneller's Complaint based on lack of subject matter jurisdiction and untimeliness.

2. The District Court correctly refused to assert supplemental jurisdiction over Petitioner's state law claims because it had no subject matter or diversity jurisdiction on which to base supplemental jurisdiction.

The District Court had the right and ability to accept supplemental jurisdiction over the remaining state law claims. If a complaint pleads both federal law and state law claims, and the court has subject matter jurisdiction over the federal claims, it may choose to exercise supplemental jurisdiction over the remaining state law claims. See 28 U.S.C. §1367(a). Further, the state court claims were barred by Pennsylvania's two year Statute of Limitations for personal injury matters (other than the breach of contract claim which has no

viability in a medical malpractice case under Pennsylvania law. Edwards v. Germantown Hospital, 1999 Pa. Super. 192, 736 A.2d 612 (1999)). Here, the District Court properly found that it lacked subject matter jurisdiction over any of Schneller's alleged federal claims. Thus, there was no original jurisdiction on which supplemental jurisdiction could attach. Accordingly, the District court correctly refused to exercise supplemental jurisdiction over Schneller's state law claims.

B. THE COURT OF APPPEALS PROPERLY DISMISSED PETITIONER'S APPEAL OF THE DISTRICT COURT'S DENIAL OF HIS MOTION TO SUPPLEMENT THE RECORD FOR LACK OF APPELLATE JURISDICTION SINCE HE FAILED TO TIMELY FILE HIS NOTICE OF APPEAL.

The Third Circuit Court of Appeals correctly dismissed Schneller's appeal of the District's Court's denial of his 'Motion to Supplement the Record' because Schneller failed to file a timely notice of appeal. The denial of a post-judgment motion is separately appealable. Post judgment orders are final for purposes of 28 U.S.C. §1291 and immediately

appealable because the policy against piecemeal review is unlikely to be undermined. Pennsylvania v. Flaherty, 983 F.2d 1267, 1276 (3d. Cir. 1993). As stated above, a party has thirty days from the date a court disposes of a motion seeking to alter or amend a judgment to file a notice of appeal. Fed. R. App. P. 4(a)(1)(A) and 4(a)(4)(A)(iv). While Schneller argues that the Court of Appeals abused its discretion, it is well established that "the time limits for filing a notice of appeal are jurisdictional in nature." Bowles v. Russell, 551 U.S. 205 (2007). Schneller filed a "Motion to Supplement to Record pursuant to Fed. R. Civ. P. 11 and 15(a). Schneller failed to provide a timely notice of appeal of the District Court's decision of September 4, 2009. He failed to file his 'Motion for Leave to Appeal in Forma Pauperis" until October 8, 2009 which in effect was his Notice of Appeal for this matter. Thus, the Court of Appeals properly declined to exercise jurisdiction over Schneller's appeal.

C. THE COURT OF APPPEALS PROPERLY AFFIRMED THE DISTRICT COURT'S DENIAL OF HIS MOTION FOR SANCTIONS SINCE THIS MATTER SHOULD HAVE BEEN ADDRESSED ON APPEAL.

The Third Circuit Court of Appeals properly affirmed the District Court's Denial of Schneller's Motion for Sanctions because appeal was the appropriate vehicle for his allegations, not said motion. Schneller makes arguments of falsity in his Motion for Sanctions that were on the merits and appropriate for an appeal to the dismissal. However, Schneller failed to timely appeal the District Court's dismissal and denial of his motion for reconsideration.

Moreover, the factual record supports the finding that the District Court properly denied Schneller's Motion for Sanctions and Costs Pursuant to Federal Rule of Civil Procedure 11 and 28 U.S.C. §1927. Under Federal Rule of Civil Procedure 11, an attorney certifies by signing, filing submitting and later advocating a pleading, written motion or other paper that to best of their knowledge, information and belief, after inquiry reasonable under the circumstances that:

> (1) it is not being presented for any improper purpose such as to

> harass, cause unnecessary delay, or needlessly increase the cost of litigation;
>
> (2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending modifying, or reversing existing law or for establishing new law;
>
> (3) the factual contentions have evidentiary support, or if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and
>
> (4) the denials of factual contentions are warranted on the evidence or if specifically so identified, are reasonably based on belief or a lack of information.
>
> Fed. R. Civ. P. 11(b)

Moreover, any attorney who "multiplies the proceedings in any case unreasonably in any case unreasonably and vexatiously may be required by the Court to satisfy personally the excess costs, expenses and attorneys' fees reasonably incurred because of such conduct." 28 U.S.C.S. §1927.

Schneller claims that all defendants created "vexatious, frivolous, unsupported and dilatory litigation". Schneller has not demonstrated that Respondents have "multiplied the proceeding unreasonably and vexatiously" by filing unnecessary motions and pleadings. He has not demonstrated that Respondents aimed to harass him and increase costs by simply defending against his filings, made frivolous arguments or other unwarranted factual and/or legal contentions. All acts taken by Respondents in this appeal were necessary to preserve their rights. Respondents were as accurate as possible in presenting any facts or argument to the Court. Respondents have been subjected to costly and unnecessary litigation due to Schneller's multitude of frivolous lawsuits in numerous courts and jurisdictions. Since Schneller has not demonstrated that Respondents made arguments or filings for improper purposes or for the purpose of misleading the court, the Court of Appeals properly upheld the District Court's denial of Schneller's Motion for Sanctions.

D. IT IS ESTABLISHED LAW THAT *PRO SE* PETITIONER MAY NOT LITIGATE TORTS ON BEHALF OF OTHERS.

Schneller has proceeded *pro se* from the

inception of the action, purporting to bring the action of behalf of himself and others. In his Complaint, he claims to represent: (1) Heirs and beneficiaries of Marjorie C. Schneller, by James D. Schneller, trustee ad litem; (2) Estate of Marjorie Schneller, by and through James D. Schneller, trustee ad litem; and (3) Marjorie Zitomer, executrix of the Estate of Marjorie Schneller (Miss Zitomer is Mr. Schneller's sister and also defendant in this action).

Schneller argues that he is entitled to represent the deceased, and the Court of Appeals was prejudiced by his efforts to do so. However, it is well-settled that a *pro se* litigant is not permitted to represent the interests of other parties. See Osei-Afrivie v. Med. Coll. Of Pa., 937 F.2d 876, 882-83 (3d Cir. 1991). "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct cases therein." 28 U.S.C. §1654. A litigant in federal court has a right to act as his or her own counsel. Id., citing to Cheung v. Youth Orchestra Found. of Buffalo, Inc., 906 F.2d 59 (2d Cir. 1990); See also 28 U.S.C. §1654. The statutory right to proceed pro se reflects a respect for the individual citizen to plead his or own cause. The right to conduct one's own litigation "is a right of high standing,

not simply a practice to be honored or dishonored by a court depending on its assessment of the desiderata of a particular case." Id.

In a related case the Third Circuit noted, "Schneller filed his complaint *pro se*. He also purports to represent other persons and entities. Although Schneller is entitled to represent himself pro se, he may not appear *pro se* in the cause of another person or entity." Schneller et al. v. Crozer Chester Medical Center, et al, 276 Fed. Appx. 169, 170 n.1 (3d. Cir. 2008). While Schneller is entitled to represent himself pro se in this matter, he may not appear *pro se* on behalf of the other parties.

E. THE COURT OF APPEALS CORRECTLY DENIED PETITIONER'S PETITION FOR A REHEARING *EN BANC*

The Court of Appeals properly denied Schneller's Petition for Rehearing *En Banc*. Under Federal Rule of Appellate Procedure 35, a hearing or rehearing en banc may be ordered by a court of appeals. An *en banc* hearing or rehearing is not favored and ordinarily will not be ordered unless: (1) *en banc* consideration is necessary to secure or maintain uniformity of the court's decisions; or (2) the proceeding

involves a question of exceptional importance. Fed. R. App. P. 35. Schneller's Petition for Reargument *En Banc* contained the same arguments that were previously before the Court and presented no newly decided case law or exceptional issues. The decisions of the District Court and the Court of Appeals already disposed of all the relevant issues. Schneller has failed to demonstrate why the Court of Appeals made a reversible error in its decision to deny his application for rehearing *en banc*.

F. THIS HONORABLE COURT LACKS JURISDICTION

Schneller's Petition for Writ of Certiorari should be denied because this Court lacks jurisdiction. There is no basis for Jurisdiction in the United States Supreme Court. Schneller fails to set forth any basis in his Petition for Writ of Certiorari. As stated in the Rules of the Supreme Court of the United States Rule 10, "a petition for a writ of certiorari will be granted only for compelling reasons."

In this case, The Court of Appeals for the Third Circuit properly dismissed Schneller's Appeal from the District Court's dismissal of the Schneller's Complaint in its entirety; this action did not decide an important federal

question. Schneller failed to file a Notice of Appeal in a timely matter. The District Court's findings do not present an unsettled important question of federal law. The District Court did not decide an important question of federal law or decide an important federal question in a way that conflicts with relevant decisions of this Court. Schneller's dissatisfaction with the Court of Appeals' refusal to hear Schneller's appeal of the District Court's Order does not warrant granting Certiorari. Therefore, there is no basis for jurisdiction in this Court.

VII. CONCLUSION

For the foregoing reasons, Respondents respectfully request the Court to deny the Petition for Writ of Certiorari to the United States Supreme Court.

Respectfully submitted,

KANE, PUGH, KNOELL, TROY & KRAMER, LLP

BY: _____

PAUL C. TROY, ESQUIRE
Attorney I.D. No. 60875
Attorney for Respondents Marjorie Zitomer, Richard Schneller and T. Sergeant Pepper, Esquire

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(3)

IN THE
SUPREME COURT OF THE UNITED STATES

NO. 10-227

JAMES D. SCHNELLER, Heirs and beneficiaries of MARJORIE SCHNELLER, JAMES D. SCHNELLER, trustee ad litem, Estate of MARJORIE SCHNELLER, JAMES D. SCHNELLER, trustee ad litem, MARJORIE ZITOMER, executrix of the Estate of MARJORIE SCHNELLER, Estate of GEORGE H. SCHNELLER, by and through personal representative JAMES D. SCHNELLER

Petitioner

v.

HERMAN McGILL, M.D.

Respondent

RESPONSE IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

KANE PUGH KNOELL TROY & KRAMER, LLP
GEORGE H. KNOELL, III, ESQUIRE
I.D. NO. 23323
510 Swede Street
Norristown, PA
19401-4807
(610) 275-2000

CERTIFICATE OF SERVICE

I, George H. Knoell, III., certify that three true and correct copies of Response of Herman McGill, M.D. in Opposition to Petition for Writ of Certiorari filed by Petitioner, James D. Schneller, Heirs and beneficiaries of Marjorie Schneller, James D. Schneller, trustee ad litem, Estate of Majorie Schneller, James D. Schneller, trustee ad litem, Marjorie Zitomer, executrix of the Estate of Marjorie Schneller, Estate of George H. Schneller, by and through personal representative James D. Schneller were served on Plaintiff Pro Se via U.S. First Class Mail, postage prepaid on August 30, 2010, as follows:

James Schneller
500 East Lancaster Avenue, #111D
Radnor, PA 19087

Angelo L. Scaricamazza, Jr., Esq.
Naulty Scaricamazza & McDevitt, LLC
1617 JFK Blvd., Suite 750
Philadelphia, PA 19103

Barbara S. Magan, Esq.
Post & Schell, P.C.
Four Penn Center
1600 JFK Blvd.
Philadelphia, PA 19103

Kevin H. Wright, Esq.
Kevin H. Wright & Associates
446 North Lane
P.O. Box 812
Conshohocken, PA 19428

Paul C. Troy, Esq.
Kane, Pugh, Knoell, Troy & Kramer LLP
510 Swede Street
Norristown, PA 19401

KANE, PUGH, KNOELL, TROY & KRAMER, LLP

BY: _____

GEORGE H. KNOELL, III., ESQUIRE
Attorney I.D. No. 23323
Attorney for Respondent

Certificate under Rule 33.1(h)

I, George H. Knoell, III., certify that the Response of Herman McGill, M.D. in Opposition to Petition for Writ of Certiorari filed by Petitioner, James D. Schneller, Heirs and Beneficiaries of Marjorie Schneller, James D. Schneller, trustee ad litem, Estate of Marjorie Schneller, James D. Schneller, trustee ad litem, Marjorie Zitomer, executrix of the Estate of Marjorie Schneller, Estate of George H. Schneller, by and through personal respresentative James D. Schneller complies with the word limitations. The Response in Opposition to Petition for Writ of Certiorari contains 3,085 words.

KANE, PUGH, KNOELL, TROY & KRAMER, LLP

BY: _____

GEORGE H. KNOELL, III, ESQUIRE
Attorney I.D. No. 23323
Attorney for Respondent

I. QUESTIONS PRESENTED

Has the Petitioner presented a compelling reason for the Court to grant Certiorari to review the Entry of Judgment of the United States Court of Appeals for the Third Circuit given that:

A. The factual record supports the finding of the United States Court of Appeals for the Third Circuit that the United States District Court of the Eastern District of Pennsylvania properly dismissed Petitioner's civil action based upon the Court's lack of subject matter jurisdiction; and,

B. The factual record supports the finding of the United States Court of Appeals for the Third Circuit that the United States District Court of the Eastern District of Pennsylvania properly dismissed Petitioner's civil action as untimely; and,

C. The Entry of Judgment of the United States Court of Appeals for the Third Circuit does not present an unsettled important question of law; and,

D. In the instant matter, the United States Court of Appeals for the Third Circuit has not decided an important

federal question that conflicts with relevant decisions of the United States Supreme Court.

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IV. CONCISE STATEMENT OF THE BASIS FOR JURISDICTION IN THIS COURT

In the Petition for Writ of Certiorari, the Petitioner fails to set forth a basis for jurisdiction in the United States Supreme Court. As stated in the Rules of the Supreme Court of the United States Rule 10, "a petition for a writ of certiorari will be granted only for compelling reasons."

In this case, the United States Court of Appeals for the Third Circuit affirmed the Judgment of the United States District Court of the Eastern District of Pennsylvania, which dismissed the Petitioner's civil action, based upon a lack of subject matter jurisdiction. The Judgment also dismissed the Petitioner's action as untimely. The Entry of Judgment of the United States Court of Appeals for the Third Circuit does not present an unsettled important question of law. Furthermore, the United States Court of Appeals for the Third Circuit has not decided an important federal question that conflicts with relevant decisions of the United States Supreme Court. Therefore, there is no basis for jurisdiction in this Court.

V. COUNTER-STATEMENT OF THE CASE

This matter derives from a civil action that was filed in the United States District Court for the Eastern District of Pennsylvania by the Petitioner, James D. Schneller, Heirs and beneficiaries of Marjorie Schneller, James D. Schneller, trustee ad litem, Estate of Marjorie Schneller, James D. Schneller, trustee ad litem, Marjorie Zitomer, executrix of the Estate of Marjorie Schneller, Estate of George H. Schneller, by and through personal representative James D. Schneller (hereinafter "Petitioner").

On February 12, 2006, Petitioner filed a Motion to Proceed In Forma Pauperis with regard to the underlying professional negligence action against numerous defendants, including Respondent Herman McGill, M.D. (hereinafter "Respondent") in connection with the deaths of his mother, Marjorie Schneller, and his father, George H. Schneller, on March 31, 2002 and October 30, 2001, respectively.[1] This matter was dismissed by the District Court based upon jurisdiction prior to the perfection of service. *See Schneller, et al. v.*

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[1] By way of background, in October of 2004, the plaintiff commenced a series of actions against these defendants in the Court of Common Pleas of the Counties of Delaware, Chester and Montgomery, alleging both medical and legal negligence in connection with the death of his parents. These cases were dismissed through entries of judgment *non pros* for failure to file Certificates of Merit as required by Rule 1042.3 of the Pennsylvania Rules of Civil Procedure. After exhausting all remedies, plaintiff received a denial of his petitions for writ of *certiorari* by the United States Supreme Court.

Crozer Chester Medical Center, et al., No. 06-0698, 2006 U.S. Dist. LEXIS 21053, *7-8 (E.D.Pa.April 18, 2006). On appeal, the United States Court of Appeals for the Third Circuit vacated the dismissal, holding that Petitioner should have been given an opportunity to amend his complaint. *Schneller, et al. v. Crozer Chester Medical Center, et al.*, 276 Fed. Appx. 169, *171 (3d Cir. 2008). Instead of filing an amended complaint, on March 27, 2008, Petitioner instituted a new, yet identical, lawsuit in the District Court.

In his Complaint, Petitioner set forth the following facts: (1) that George H. Schneller died on October 30, 2001; (2) that Marjorie Schneller died on March 31, 2002, after a stay in two nursing homes, as well as periods of treatment during a period of hospitalization from July of 2001 until her death; and (3) that Marjorie Zitomer is the sister of Petitioner and the executrix and administrator of the estate of Marjorie C. Schneller and co-administrator with Petitioner and Richard Schneller of the paternal estate. Based upon these allegations of facts, Petitioner's Complaint contained the following counts:

Count 1A	Violation of the Assisted Suicide Funding Restriction Act of 1997
Count 1B	Civil Action for Deprivation of Rights
Count 1C	Conspiracy to Interfere with Civil Rights – Depriving Persons of Rights and Privileges
Count 1D	Conspiracy to Interfere with Civil Rights – Obstructing Justice and Intimidating Parties – Battery

Count 1E	Neglect to Prevent Deprivation of Rights and Conspiracy for Deprivation of Rights – Failure to Warn
Count 2	Breach of Contract
Count 3	Breach of Contract
Count 4	Fraudulent Inducement of Contracts
Count 5	Breach of Confidential Relationship, Fiduciary Relationship and Fiduciary Duty
Count 6	Wrongful Death
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Count 8	Intentional Tort – Abuse of Power of Attorney
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Count 14	Survival – Negligent and Intentional Infliction of Emotional Distress
Count 15	Survival – Conspiracy
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Count 19	Slander and Libel
Count 20	Fraud and Intentional Misrepresentation
Count 21	Conspiracy
Count 22	Negligent and Intentional Infliction of Emotional Distress
Count 23	Breach of Fiduciary Duty

Count 24	Tortious Interference with Present and Prospective Economic Advantage
Count 25	Punitive Damages

Petitioner identified Respondent as Marjorie Schneller's general physician, indicating that the action against Respondent was one of professional liability and intentional tort.

In response to the Complaint, Respondent filed a Motion for Joinder to the Motion to Dismiss of Defendants Crozer Keystone Health System and Crozer Chester Medical Center and Motion to Dismiss of Defendant Lalith Gurijala. On March 19, 2009, the District Court granted all pending Motions to Dismiss and sua sponte denied any remaining motions as moot. The District Court further directed that this case be marked as closed, as all claims had been dismissed as to all of the defendants. Petitioner then filed a Motion for Reconsideration with the District Court, which was denied on June 26, 2009. Subsequently, on July 27, 2009, Petitioner filed a Motion for Leave to Appeal In Formal Pauperis, which was granted on August 3, 2009.

Thereafter, on September 29, 2009, Petitioner filed an appeal to the Court of Appeals for the Third Circuit. On July 20, 2010, the Court of Appeals for the Third Circuit issued an Entry of Judgment that affirmed the Judgment of the District Court.

Petitioner now seeks Certiorari in this Honorable Court.

VI. SUMMARY OF THE ARGUMENT

The Court of Appeals for the Third Circuit properly affirmed the District Court's dismissal of the Petitioner's in its entirety for various reasons. First, the District Court lacked subject matter jurisdiction. Petitioner failed to establish the existence of a federal question, pursuant to 28 U.S.C. § 1331, or, in the alternative, diversity of citizenship among the parties and an amount in controversy in excess of $75,000, pursuant to 28 U.S.C. § 1332.

Second, the plaintiff's federal claims failed as untimely. To assert his claims, the plaintiff relied upon federal statutes that do not explicitly contain a provision regarding time limitations. Consequently, Pennsylvania's two year personal injury statute of limitations is applicable. *See City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 124 (2005). Plaintiff is well beyond the applicable statutory period, as this cause of action arises out of his mother's death on March 31, 2002 and the events preceding that date.

Also, in the Petition for Writ of Certiorari, Petitioner fails to set forth a basis for jurisdiction in the United States Supreme Court. As stated in the Rules of the Supreme Court of the United States Rule 10, "a petition for a writ of certiorari will be granted only for compelling reasons." The Entry of Judgment of the United States Court of Appeals for the Third Circuit does not present an unsettled important question of law. Furthermore, the United States Court of Appeals for the Third Circuit has not decided an important federal question that

conflicts with relevant decisions of the United States Supreme Court. Therefore, there is no basis for jurisdiction in this Court.

VII. ARGUMENT

A. THE COURT OF APPEALS FOR THE THIRD CIRCUIT PROPERLY AFFIRMED THE DISTRICT COURT'S DISMISSAL OF PETITIONER'S CAUSE OF ACTION BASED UPON A LACK OF SUBJECT MATTER JURISDICTION.

Federal Courts are granted subject matter jurisdiction over cases where there is complete diversity of citizenship among the parties and an amount in controversy in excess of $75,000. *28 U.S.C. § 1332(a).* Courts have interpreted this requirement of complete diversity to mean that "jurisdiction [in federal court] is lacking if any plaintiff and any defendant are citizens of the same state." *Menan Co. v. Alt. Mut. Ins. Co.*, 147 F.3d 287, 290 (3d Circ 1998) (citing *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267, L.Ed. 435 (1806)). In the case at bar, Petitioner and the eleven named defendants are residents of the Commonwealth of Pennsylvania. It is, therefore, obvious that there is no diversity of citizenship amongst the parties, rendering 28 U.S.C. § 1332(a) inapplicable.

Moreover, Petitioner failed to present a sufficient federal question in accordance with 28 U.S.C. § 1331. Federal question jurisdiction exists in one of two circumstances: "(1) where federal law

creates the cause of action; or (2) the complaint poses a substantial federal question." *Sodi v. Discover Financial Services*, 2004 U.S. Dist. LEXIS 24133, *8 (E.D.Pa.2004).

Petitioner attempted to set forth a federal cause of action to the extent he alleged a violation of the Assisted Suicide Funding Restriction Act of 1997, 42 U.S.C. § 14401, *et seq.* However, this Act does not create a private right action, and, thus does support federal question jurisdiction.

To determine whether Congress intended to create a private cause of action under a federal statute, one should examine the language and circumstances surrounding its enactment. *See Transamerica Mortgage Advisors, Inc. v. Lewis*, 444 U.S. 11, 15 (1979). Whether a statute creates a particular cause of action, "either expressly or by implication, is basically a matter of statutory construction." *Id.* The Act at issue does not expressly provide for a private cause of action. Moreover, the Act explicitly states that the purpose of its enactment is "to continue current Federal policy by providing explicitly that Federal funds may not be used to pay for items and services (including assistance) the purpose of which is to cause (or assist in causing) the suicide, euthanasia, or mercy killing of any individual." *42 U.S.C. § 14401(b).*

Petitioner alleged that the defendants, including Respondent, are in violation of the Act to the extent they utilized government funds for the purpose of paying for health care services to assist in causing the death of his Marjorie Schenller by euthanasia, mercy killing and assisted suicide. Petitioner has misapplied the law, as the language of

the Act further indicates that its promulgation was based upon the intent of Congress to prevent federal funds and services from being used for the criminal and unlawful purpose of assisted suicide. *42 U.S.C. § 14401(a)(2).* In the case at bar, Petitioner has not filed any criminal charges in connection with the care and treatment of his parents. Not only is Petitioner misguided in his application of the Assisted Suicide Funding Restriction Act of 1997, 42 U.S.C. § 14401, *et seq.*, but also, and, more importantly, there is no private cause of action under this statute, either expressly, or by implication.

Petitioner also asserted civil claims against the defendants, including Respondent, under 42 U.S.C. §§ 1983, 1985 and 1986. Petitioner attempted to set forth civil rights claims against Respondent for violations of Marjorie Schneller's Fourteenth Amendment rights. Specifically, it was alleged that Respondent deprived Marjorie Schneller of life, liberty and property in their implementing of the advanced health care directive over Petitioner's objection, resulting in Mrs. Schneller's death. It was further contended that Respondent conspired to deprive Marjorie Schneller of rights and privileges, including "life, privacy, security, freedom of speech, freedom to write and communicate, right to locomotion, family interaction, rights to legal representation, to meaningful family visits and right to choose her daily regiment and health program." Petitioner alleged that Respondent also conspired for the purpose of "impeding, hindering, obstructing, and defeating, the due course of justice enjoyed by citizens, with the intent to deny plaintiffs the equal protection of the laws," and that these acts constituted causes of action for obstruction of

justice, criminal assault and criminal maiming. Lastly, it was alleged that Respondent neglected to prevent a deprivation of rights and conspiracy for deprivation of rights to the extent they had "knowledge of the wrongs conspired to be done, as enumerated in this complaint, were about to be committed, and having power to prevent or aid in preventing the commission of same..."

The language of 42 U.S.C. § 1983 provides, in pertinent part:

> § 1983. Civil action for deprivation of rights
> Every person, who, under color of any statute, ordinance, regulation, custom, or usage, of any State...subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

Id. See also Groman v. Township of Manalapan, 47 F.3d 628, 633, n.4 (3d Cir. 1995).

When interpreting this language, the Courts have opined that the statute does not create substantive rights; but, rather, it provides a remedy

for the violation of rights created by federal law. *Groman, supra* at 633 (citing *Oklahoma City v. Tuttle*, 471 U.S. 808, 816 (1985)). Accordingly, in order to establish a prima facie case under 42 U.S.C. § 1983, a plaintiff must demonstrate: "(1) a person deprived him of a federal right; and (2) the person who deprived him of that right acted under color of state or territorial law." *Groman, supra* (citing *Gomez v. Toledo*, 446 U.S. 635, 640 (1980)).

Petitioner failed to satisfy these requirements. A private actor may cause a deprivation of a constitutional right; however, said actor is only subject to liability under Section 1983, when it does so under color of state law. *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 156 (1978). In the case *sub judice*, the alleged actions of Respondent were not performed under color of state law, and, thus, they cannot be considered state actors.

As Petitioner failed to establish a cause of action under 42 U.S.C. § 1983 or related statutes, a basis for federal question jurisdiction does not exist. Therefore, Petitioner's argument that he has provided a basis for federal question jurisdiction does not warrant Certiorari with this Court. Petitioner does not allege any reason why this Honorable Court would have jurisdiction to hear this claim. As stated in the Rules of the Supreme Court of the United States Rule 10, "a petition for a writ of certiorari will be granted only for compelling reasons." The Entry of Judgment of the United States Court of Appeals for the Third Circuit does not present an unsettled important question of law. Furthermore, the United States Court of Appeals for the Third Circuit has not decided an important federal question that conflicts with relevant

decisions of the United States Supreme Court. Therefore, there is no basis for jurisdiction in this Court.

B. THE COURT OF APPEALS FOR THE THIRD CIRCUIT PROPERLY AFFIRMED THE DISTRICT COURT'S DISMISSAL OF PETITIONER'S CAUSE OF ACTION AS UNTIMELY.

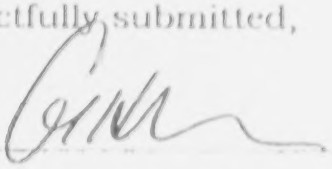
To assert his claims, Petitioner relied upon federal statutes that do not explicitly contain a provision regarding time limitations. Consequently, Pennsylvania's two year personal injury statute of limitations is applicable. *See City of Rancho Palos Verdes v. Abrams*, 544 U.S. 113, 124 (2005) (where a plaintiff relies upon federal statutes in asserting a claim, and those statutes do not contain a specific provision regarding the time within which an action may be brought, federal courts apply the statute of limitations governing suits for personal injury in which the action arises). Moreover, actions brought under 42 U.S.C. §§ 1983, 1985 and 1986 are subject to the statute of limitations prescribed for personal-injury actions in the state in which the relevant actions occurred. *See Lake v. Arnold*, 232 F.3d 360, 368 (3d Cir.2000).

This matter is well beyond the applicable statutory period, as this cause of action arises out of his mother's death on March 31, 2002 and the events preceding that date. Petitioner has not established any basis for jurisdiction with this Court, and, therefore, the request for certiorari must be dismissed.

VIII. CONCLUSION

For the foregoing reasons, Respondent respectfully requests the Court to deny the Petition for Writ of Certiorari to the United States Supreme Court.

Respectfully submitted,

BY: 

GEORGE H. KNOELL, III, ESQUIRE
Attorney I.D. No. 23323
KANE, PUGH, KNOELL, TROY & KRAMER, LLP
510 Swede St.
Norristown, PA 19401
(610) 275-2000

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(4)

Supreme Court, U.S.
FILED
OCT 3 - 2010
OFFICE OF THE CLERK

No. 10 - 227

In The

SUPREME COURT OF THE UNITED STATES

James D. Schneller,

Petitioner

v.

Prospect Park Nursing and Rehabilitation Center, Marjorie Zitomer; Richard Schneller; T. Sergeant Pepper, Esquire

Respondents

Petition For Writ Of Certiorari

REPLY BRIEF OF PETITIONER

James D. Schneller pro se
500 E. Lancaster Ave. #111d
Radnor, PA 19087
610-688-9471

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To the Honorable Justices of the Supreme Court:

Petitioner James D. Schneller, representing himself, replies to the response briefs of Marjorie Zitomer; Richard Schneller, & T. Sergeant Pepper, Esquire, and Herman McGill M.D..

I. REQUEST FOR CONSOLIDATION OR JOINT CONSIDERATION

Petitioner notes in section IV of the petition, a usefulness of consolidation of this petition with a concurrent petition filed the same month. That petition contains the same request. Third Circuit No. 09-4577 (Schneller v. Fox Subacute at Clara Burke), was filed with the clerk on July 1, 2010 and the latest reply filed on September 21, 2010.

Petitioner requests the Courts' attention to the fact that he has more fully argued the legal discussions, in the other petition, asking

incorporation into this petition.

The procedural difference between these cases is that, in this case, the District Court denied the motion to supplement the record, and the motion for Rule 11/28 U.S.C. §1927 sanction, in orders entered on September 4 and September 9, 2009, respectively. In Schneller v. Fox Subacute, now No. 10-120, the district Court denied both the motion to supplement the record, and the motion for Rule 11/28 U.S.C. §1927 sanction, in orders entered on the same day, September 9, 2009.

Therefore in Schneller v. Fox Subacute, the Third Circuit found it necessary to review plaintiff's claim of abuse of discretion in denial of the motion for sanctions, and affirmed, in what plaintiff claims is clear error.

Petitioner has written the clerk today, asking their assistance in any way possible of implementing abeyance of this case despite the fact that it has been distributed, pending the imminent distribution of No. 10 - 120, and requests the Court's action as deemed appropriate.

II. ARGUMENT

A. Herman McGill MD Waived His Right To Participation In This Petition

Herman McGill M.D. has waived his right to participate in this case because he chose to not participate in the proceedings in the lower Courts. This occurred despite the fact that Herman McGill M.D. and certain other non-diverse defendants were named as defendants in the opening paragraphs No. 10 to 14 of the complaint, in a subsection joining them in the event that federal question claims overwhelmed any need for diversity jurisdiction.

B. In Reply To Factual Claims Presented

Respondents claims as listed below are objected to as false:

P.1 - Claims of a "factual record" in support of respondents' arguments misrepresent that a

factual record of any sort exists. While plaintiff was careful to swear under penalty of perjury as to many of his pleadings, the district Court ultimately refused to hold hearing. It is plainly evident also that respondents attempt to rely on their prior factual claims made in their pleadings in the Courts below, despite the fact that they were not certified or attested to in any way, and despite the fact that plaintiff has raised a pervasive falsity in respondents' pleading, starting in the district Court.

P. 9 , 10 , 11 - Respondents' descriptions of the complaint as a "negligence" action are false, and attempt also to obscure the fact that the cases are federal question cases, start to finish.

P. 9 , 10 - Respondents, in footnotes to their counter statements of the case, state numerous inaccurate and misrepresenting facts regarding cases in Pennsylvania county courts. Although plaintiff has validly claimed that one reason the district Court has jurisdiction is because of an overt and voluminous denial of federal rights in state court decisions, the false claims in these footnotes show the proclivity of the respondents to

misrepresent. Furthermore, a showing is attempted to be made, that plaintiff is inept, or repetitively litigious, to which plaintiff responds that such is definitively not the case, that the petition, like the record, and like the record of petitioner's other cases in this Court, show that petitioner does not file suits in any manner other than soundly permitted by law.

Respondents' effort to show that "cases were dismissed" omits the fact that most of the cases are alive, often now accompanied by lawful efforts to transfer the within dismissed federal claims, which effort has coincided with an overall dead-ending of the cases through inaction or entry of hollow preliminary injunctions for the stated purpose of stopping "litigiousness" that was never proven. Respondent's claim of an "exhausting all remedies" omit the prevalent fact that appellate decisions are packed with absences of review on the majority of legal issues, and an inability of them to stand as law of the case or res judicata, even regarding cases lawfully re-filed.

Petitioner has also argued, among his many objections, that the state claims alleged to be non prossed or dismissed were not granted formal judgments of non pros, or were granted non pros as

to irrelevant parties, and voluminous additional aspects, of this nature, including lack of jurisdiction in some respects, causing the respondent's evaluations to be false, and showing lack of law of the case, and an apparent effort by the state courts to avoid overextending of what is an ongoing, shameful handling of the cases.[1] Extensive evidence in this regard, which also pertained to the State statute of limitations now claimed to be global, [2] was prevented in the district Court.

P. 10 (Herman McGill M.D.)

Respondent falsely states that petitioner "instead of filing an amended complaint" went about "instituting a new, yet identical lawsuit . . " Respondent has erred because this claim in reality pertains to the case now before the Court at 10 - 120, and is discussed in those pleadings.

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[1] Ministerial manipulativeness and obstruction is also claimed in substantial volume in those cases.

[2] Defendants and the trial Court likely sought to cause plaintiff the voluminous task of printing evidence to submit as affidavit submissions, but plaintiff, noting that defendant's purported defenses were lacking in documentary support, awaited hearing.

Respondents are omitting, regardless, the fact that petitioner filed prior to the one-year limitation of time under 42 Pa.C.S.§5535, which allows for re-filing of suits that have been dismissed for reasons other than dismissal on the merits.

P. 13 (Herman McGill M.D.), P. 22 (Remainder)

Petitioner replies that respondents' claims that diversity did not exist, omit in totality, as had the district Court, petitioner's timely, valid proposal to withdraw the case as to the nursing home, or any party deemed to be a Pennsylvania citizen, in order to cause diversity jurisdiction.

Herman McGill M.D. and other Pennsylvania citizens were named as optional defendants because the federal questions were so strong.

C. Reply Regarding Civil Rights and Timeliness

Defendants have stated a defense that petitioner's civil rights claims were insufficient as

a matter of law, most of which petitioner hopes to have anticipated sufficiently in his petition.

It is needful of adding that petitioner, in his trial court briefs in opposition to the motions to dismiss the complaint, of Prospect Park Nursing Center, and of Marjorie Zitomer, Richard Schneller, & T. Sergeant Pepper Esquire, claimed liability under color of law *and* state action for reasons including that private, individual conduct may be found to constitute state action (1) where state courts enforce agreement affecting private parties, (2) where state significantly involves itself with private party, or (3) where there is private performance of government function. Sament v. Hahnemann Medical College and Hospital of Philadelphia, 413 F.Supp. 434 (E.D.Pa.,1976) "at least when the state creates a system permitting private parties to substitute their judgment for that of a state official or body, a private actor's mere invocation of state power renders that [private] party's conduct actionable [as a joint actor with the state] under § 1983." Cruz v. Donnelly, 727 F.2d 79, 82 (3d Cir.1984). Plaintiffs claim that the system established under sections of Chapter 54 of Title 20 of the Pennsylvania Consolidates Statutes regarding

Advance Health Directives and Chapter 55 of Title 20 of the Pennsylvania Consolidates Statutes regarding Incapacitated Persons, along with appellate decisions in that arena, allow a physician, a hospital administrator, and/or a living will surrogate, in some combination, to substitute their judgment for that of a Pennsylvania Orphans Court, and therefore to perform government function, in matters of longevity of their patients' existence. Also, the Commonwealth by it's laws significantly involves itself with facilities, physicians, and surrogates, and furthermore, the Chester County Register of Wills had on December 31, 2001 enforced an agreement affecting private parties Marjorie C. Schneller, James D. Schneller, surrogate Marjorie Zitomer; power of attorney Richard Schneller, and in many respects their attorney, T. Sergeant Pepper Esquire, and his firm. The agreement provided for a three way administration of the estate of George H. Schneller, but carried with it numerous legal implications, none of them explained to the plaintiffs. Said agreement and the decree of letters which enforced it substantially caused the acts of private performance of government function, where the state had significantly

involved itself with private parties. This is an entwining with governmental policies and impregnating with a governmental character as to become state action within the Civil Rights Act. Klavan

Furthermore, federal law mandates that the rights of the disabled be preserved and facilitated. e.g. Dipietrae v. City of Philadelphia, 666 A.2d 1132 (Pa. Cmwlth. 1995). The complaint claims a cause of action for discrimination to disabled under Federal grants and programs pursuant to 29 U.S.C. § 794 et seq.

In a similar fashion, respondents omit any discussion or mention of plaintiffs' claim of equitable tolling in regard to the statute of limitations, and the district Court's refusal of hearing despite scheduling of argument, which was attended by all parties, and of considerable length.

Petitioner claimed numerous legal reasons for timeliness of the action. The fact that the district Court and the Third Circuit avoided many of them, including a request for application of all statute of

limitations issues on a defendant-by-defendant basis, does not absolve the respondents of accuracy in this Court.

III. CONCLUSION

Plaintiff regrets any appearance of an effort on his part to present contested issues of fact. The instant questions regarding ongoing false claims and affirming of motion for sanctions, cause this issue to be relevant. The objected-to fact that hearing was not held, assists.

Petitioner regrets any delay in filing this reply brief. Herman McGill M.D. filed his response brief 15 days late without leave of Court.

Petitioner was forced to consider, at length, whether the case would benefit from this reply, or whether the question was sufficiently present in the petition and response.

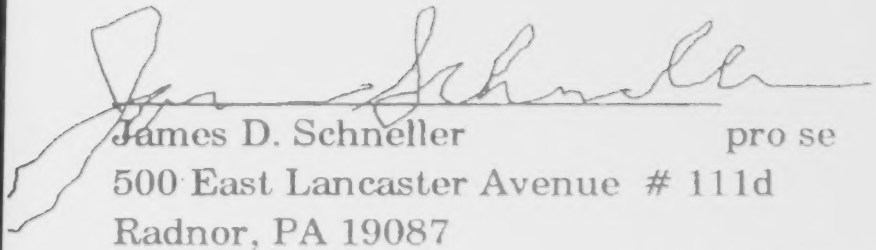
As stated in section I above, petitioner had anticipated that this and a related case would be distributed for the same conference, but then a group of respondents in No. 10 - 120 filed a late response brief, and the case was then distributed before plaintiff could write the Court to seek either formal or informal consolidation or some other implement. Meanwhile plaintiff was forced to litigate pro se in three ongoing election related suits because he is a candidate for office. The last of the replies filed solidified petitioner's concern that replies were necessary in both cases, and so he files this reply, having completed taking appeal from a decision entered two days ago in a complex election mandamus case.

WHEREFORE, petitioner James D. Schneller respectfully requests that certiorari be granted, or, in the alternative, that the decision of the Third Circuit Court of Appeals be reversed.

WHEREFORE, petitioner respectfully requests continuance of consideration of this case, despite the fact that it has been distributed, pending the

imminent distribution of No. 10 - 120, or the Court's alternative action as deemed appropriate.

WHEREFORE, petitioner respectfully requests vacating of judgment, and of any findings of lack of falseness and misrepresentation by defendants, and remand for order for hearing on all claims of false statements in this Court and the district court.



James D. Schneller pro se
500 East Lancaster Avenue # 111d
Radnor, PA 19087

Date: October 8, 2010